

radius of one hundred (100) miles of the city or town of the association, including counties traversed by said radius or to all the counties adjoining that in which the home office is situated or where the home office of an association is located within less than one hundred (100) miles of border line of the State to a limited number of connecting counties whose total area does not exceed that allowed under the law to any other local mutual aid association of Texas, and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass.

PURL, Chairman.

(Minority Report.)

Committee Room,  
Austin, Texas, Feb. 22, 1933.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, a minority of your Committee on Insurance, to whom was referred

S. B. No. 186, A bill to be entitled "An Act to amend Article 4875a-3, Chapter Nine A, Title 78, Revised Civil Statutes of 1925 providing and permitting local mutual aid associations to operate in the State of Texas and write business in territory embraced within one county, or to a territory embraced within a radius of one hundred (100) miles of the city or town of the association, including counties traversed by said radius or to all the counties adjoining that in which the home office is situated or where the home office of an association is located within less than one hundred (100) miles of border line of the State to a limited number of connecting counties whose total area does not exceed that allowed under the law to any other local mutual aid association of Texas, and declaring an emergency."

Have had the same under consideration and beg to differ with the majority of the committee, and report the bill back with recommendations that it do pass and be printed.

MOORE.  
COUSINS.

## TWENTY-NINTH DAY.

Senate Chamber,  
Austin, Texas,  
February 23, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

## Committee Reports.

(See Appendix.)

## Bills and Resolutions.

By Senator Parr:

S. B. No. 266, A bill to be entitled "An Act authorizing any common school district, independent school district, consolidated common school district, consolidated independent school district, county line school district, consolidated county line school district or rural school district to hold an election for the purpose of the cancellation and revocation of any unsold school bonds and providing that such election shall be ordered and held in the same form and manner provided for in voting such school bonds, etc., and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Fellbaum:

S. B. No. 267, A bill to be entitled "An Act amending Articles 7245, 7246, 7247, 7248, and 7249 of the

1925 Revised Civil Statutes of Texas by providing for the election, oath, and bond of the office of assessor and collector of taxes, as combined by the recent amendment to the Constitution; providing that Articles 7181 to 7359, inclusive, of Title 122 of the 1925 Revised Civil Statutes of Texas, including all amendments, as well as the 1925 Revised Civil Statutes, shall be so construed as to carry out the purpose of the constitutional amendment providing for one office and that the words "assessor," "assessor of taxes," "collector," "collector of taxes," or "tax collector" shall refer to and mean one office or officer; repealing Articles 7177, 7178, 7179 and 7180 of Title 122 of the 1925 Revised Civil Statutes of Texas; and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senator Beck:

S. B. No. 268, A bill to be entitled "An Act making an appropriation to pay taxes due by the State of Texas to Bowie County, Texas, for the years 1928 to 1932, inclusive, on lands owned by the Texas Prison System, and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Beck:

S. B. No. 269, A bill to be entitled "An Act appropriating the unexpended balance of funds appropriated for the control and prevention of malaria by Chapter 41, Acts Regular Session, Forty-second Legislature, and declaring an emergency."

Read and referred to Committee on Finance.

By Senators Small, Moore, Hornsby, Redditt and Greer:

S. B. No. 270, A bill to be entitled "An Act to amend Article 2655, Chapter 10, of the Revised Civil Statutes of the State of Texas, 1925, relating to the election, term of office, duties and qualifications of the State Superintendent of Public Instruction, and declaring an emergency."

Read and referred to Committee on Educational Affairs.

By Senator Collie:

S. B. No. 271, A bill to be entitled "An Act amending Acts of 1930, Fifth Called Session, Forty-first

Legislature of Texas, page 212, Chapter 66; otherwise identified as Article 2774a, Revised Civil Statutes of 1925, by exempting certain cities and towns from the provisions thereof until the people residing therein, by referendum, avail themselves of the provisions thereof by vote of the majority of the qualified voters thereof; repealing all laws and parts of laws in conflict herewith and declaring an emergency."

Read and referred to Committee on Towns and City Corporations.

By Senator Murphy:

S. B. No. 272, A bill to be entitled "An Act to amend Article 5449 of the Revised Civil Statutes of 1925, by providing a judgment lien shall cease to exist if execution be not sued out within 10 years from the date of judgment, or if 10 years intervene between date of last execution issued and time of suing out another execution."

Read and referred to Committee on Civil Jurisprudence.

By Senator Pace:

S. B. No. 273, A bill to be entitled "An Act authorizing the district attorney of the Seventh Judicial District to appoint an assistant district attorney; prescribing the time for which he shall be appointed; prescribing his duties and providing for payment of salary, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senator Woodul:

S. B. No. 274, A bill to be entitled "An Act regulating petitions in suits for divorce to require such petitions to state whether there are children under sixteen years of age, and if so, to give full information as to such minors, making it the duty of the courts having jurisdiction of such suits to inquire into the status of such children, if divorce be granted; empowering such courts to make orders and decrees for their support and maintenance until they reach sixteen years of age; to determine and fix the amounts to be paid, the time of payment, to whom to be made, to have authority to enforce all decrees by contempt proceedings, and to have control of such decrees, to alter them when justice requires, to ascertain the ability to pay, to enforce the duty of a father to sup-

port his children after divorce, presenting the procedure, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senators Redditt and Patton:  
S. B. No. 275, A bill to be entitled "An Act to transfer the funds of the Sand, Shell and Gravel Fund, the Fish and Oyster Fund and the Fish Propagation and Protection Fund to the Special Game Fund; providing for the placing to the credit of the Special Game Fund future collections provided for under the law that now are placed to the credit of the Sand, Shell and Gravel Fund, the Fish and Oyster Fund and the Fish Propagation and Protection Fund; providing for what purposes the Special Game Fund shall be spent and declaring an emergency."

Read and referred to Committee on Game and Fish.

By Senators Duggan and Regan:  
S. B. No. 276, A bill to be entitled "An Act to amend subdivision 32 of Article 199, Title 8, of the Revised Civil Statutes of the State of Texas, 1925, as amended by Acts 1931, Forty-second Legislature, First Called Session, Page 27, Chapter 14, Section 1, relating to the District Court for the 32nd Judicial District so as to change the dates of convening the District Court in the counties of the 32nd Judicial District of Texas; subdivision 70 of Article 199, Title 8, of the Revised Civil Statutes of the State of Texas, 1925, as amended by Acts 1929, Forty-first Legislature, Page 50, Chapter 19, relating to the District Court for the 70th Judicial District of the State of Texas, so as to include Howard County in the 70th Judicial District, and to change the dates of convening of the District Court in the counties of the 70th Judicial District; subdivision 109 of Article 199, Title 8, of the Revised Civil Statutes of the State of Texas, 1925, as created by Acts 1929, Forty-first Legislature, Regular Session, page 50, Chapter 19, relating to the creation of the 109th Judicial District of the State of Texas, so as to include Andrews County in the 109th Judicial District, and to change the dates of convening the District Court in the counties of the 109th Judicial District; validating all process, writs, bonds and recognizances of every kind and character

heretofore issued or entered into, and all grand and petit jurors selected and drawn under the existing laws by the various counties affected by this Act, and describing that same shall be returnable and said juror served for the next term of court in the various counties affected after the taking effect of this Act; provided that if any term of court shall be in session in any of the counties affected by this Act, the same shall continue in session until adjournment of the term, and thereafter the terms of court in such county shall be held in conformity with this act; providing for the repeal of all laws or parts of laws in conflict herewith; and declaring an emergency."

Read and referred to Committee on Judicial Districts.

By Senator Duggan:

S. B. No. 277, A bill to be entitled "An Act relating to free textbooks for the public free schools of this State; amending Sections 30, 31, 33, 34 and 39, and repealing Sections 40 and 41, of Chapter 176 of the General Laws of the Regular Session of the Thirty-ninth Legislature of the State of Texas; providing for the setting aside of funds for free textbooks used in the public free schools of this State; requiring reports as to the funds for said textbooks; providing for the distribution of the amount set aside for free textbooks direct to the schools using such books and the purchase of same by such schools themselves from the various textbook depositories or agencies, and providing that any free textbook moneys not so used by any such school shall become a part of its available school moneys and may be used by it for general school purposes; making the necessary changes in the statutes to accomplish the main purpose of this act; and declaring an emergency."

Read and referred to Committee on Educational Affairs.

By Senator Purl:

S. B. No. 278, A bill to be entitled "An Act to amend Article 285, Chapter 4, Title 5, Code of Criminal Procedure, relating to the surrender by surety of his principal; providing a surety by obtaining a warrant of arrest for his principal shall not thereby be relieved of his undertaking unless warrant is executed or the conditions of the undertaking fully complied with; providing that all

costs of executing the warrant shall be as provided in Articles 1029 or 1030, Code of Criminal Procedure, accordingly as the facts may be, and shall be paid by the surety and not by the State of Texas, and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senator Purl:

S. B. No. 279, A bill to be entitled "An Act prescribing the qualifications of all persons who may testify in criminal actions; providing for compulsory process to compel the attendance of convicts as witnesses in certain instances, and taking depositions thereof; repealing Article 708, Chapter 1, Title 8, Code of Criminal Procedure, and declaring an emergency."

Read and referred to Committee on Criminal Jurisprudence.

By Senator Purl:

S. B. No. 280, A bill to be entitled "An Act providing that when a necessity exists for the appointment of a receiver of an insurance company by any court of competent jurisdiction in this State, that it shall be the duty of such court to enter its order so finding and then to transfer the property and affairs of such insurance company to the Board of Insurance Commissioners of this State which shall act as liquidating agent in lieu of any other receiver for the purpose of administering the affairs of such insurance company; prescribing the powers and duties of the Board of Insurance Commissioners in connection with winding up and administering the affairs of such insurance company, and authorizing the Board of Insurance Commissioners to appoint necessary employees for that purpose; providing that the necessary expenses incurred in such liquidation shall be paid out of the assets of such insurance company; and declaring an emergency."

Read and referred to Committee on Insurance.

By Senator Martin:

S. B. No. 281, A bill to be entitled "An Act to amend Chapter 9 of Title 28 of the Revised Civil Statutes of Texas by adding language to Article 1093 to limit the amount of any assessment to one-fourth of the assessed value of the property at the time the lien is fixed, and providing that parties cited by publication shall be entitled, in a suit to

enforce such lien, to plead any matters which might have been urged in an original hearing upon the assessment, and prohibiting personal judgments except upon contract liens, and declaring an emergency."

Read and referred to Committee on Towns and City Corporations.

By Senators Parr and Small:

S. B. No. 282, A bill to be entitled "An Act to amend Article 6561 of the Revised Civil Statutes of 1925; and declaring an emergency."

Read and referred to Committee on State Affairs.

By Senator Holbrook (by request):

S. B. No. 283, A bill to be entitled "An Act to amend Sections 2 and 3A of an Act passed by the Legislature of Texas February 26, 1929, H. B. No. 153, relating to title insurance business and the capital stock of corporations doing such business, and to prohibit such corporations guaranteeing mortgages, and declaring an emergency."

Read and referred to Committee on Insurance.

By Senator Hopkins:

S. B. No. 284, A bill to be entitled "An Act amending the Revised Civil Statutes of Texas by adding a new Article to Chapter 2, Title 47 and a new Article to Chapter 3 of said Title of the Revised Civil Statutes of 1925, to be known as Articles 2558-a and 2566-a respectively, so as to provide that any banking corporation, association or individual banker (other than a national bank) designated as a county depository or as a city depository, and having on deposit any county or city funds or funds of any political subdivision of the State, shall be subject to control and examination by the Banking Commissioner of the State of Texas in all respects, as is provided for state banks and trust companies under the provisions of Title 16 of the Revised Civil Statutes of Texas of 1925 as amended, and declaring an emergency."

Read and referred to Committee on Banks and Banking.

By Senator Rawlings:

S. B. No. 285, A bill to be entitled "An Act providing that the clerk of any justice court, county court, county court at law, district court, or other court of record shall give non-resident attorneys written notice by

registered mail at least ten days before the date a cause is set for hearing; providing that in the absence of such notice no adverse default judgment shall be rendered against any party represented by such non-resident attorney, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senators Moore and Purl:

S. B. No. 286, A bill to be entitled "An Act making it an offense punishable by removal, for any officer, employee, member or members of any board of regents, board of managers, president, dean or other officer or employee of any State educational institution or penal or eleemosynary institution, or any State department executive, chief or other employee, to increase the personnel of or to increase the compensation of any employee, officer, agent or representative out of local, special, emergency, deficiency or other funds of whatever kind or character coming into possession of any State educational institution, State eleemosynary institution or State department, bureau, commission or other State agency in excess of the amount specified and appropriated biennially or at other intervals, by the Legislature, to prohibit increasing the number of employees in any institution, department, board, bureau or commission without authority of certain individuals, fixing a penalty and method of removal for violating this Act, and declaring an emergency."

Read and referred to Committee on State Departments and Institutions.

#### S. J. R. No. 6.

The Chair laid before the Senate on its third reading the following resolution:

By Senator Woodul:

S. J. R. No. 6, A joint resolution Proposing an amendment to Section 5 of Article IV of the Constitution of the State of Texas, fixing the salary of the Governor; providing for its submission to the voters of the State of Texas as required by the Constitution, and making an appropriation therefor.

Read third time and finally passed by the following vote:

#### Yeas—23.

Beck.	Parr.
Blackert.	Patton.
Cousins.	Purl.
Duggan.	Rawlings.
Fellbaum.	Regan.
Greer.	Russek.
Hopkins.	Sanderford.
Martin.	Small.
Moore.	Stone.
Neal.	Woodul.
Oneal.	Woodward.
Pace.	

#### Nays—8.

Collie.	Murphy.
DeBerry.	Poage.
Holbrook.	Redditt.
Hornsby.	Woodruff.

#### S. J. R. No. 8.

The Chair laid before the Senate on its third reading the following resolution:

By Senator Woodul:

S. J. R. No. 8, A joint resolution Proposing an amendment to Section 23 of Article IV of the Constitution of the State of Texas, fixing the salary of the Comptroller, Treasurer and the Commissioner of the General Land Office at Six Thousand (\$6,000.00) Dollars per annum; providing for its submission to the voters of the State as required by the Constitution, and making appropriation therefor.

Read third time and finally passed by the following vote:

#### Yeas—22.

Beck.	Parr.
Blackert.	Patton.
Cousins.	Purl.
Duggan.	Rawlings.
Fellbaum.	Regan.
Greer.	Russek.
Hopkins.	Sanderford.
Martin.	Small.
Moore.	Stone.
Neal.	Woodul.
Pace.	Woodward.

#### Nays—9.

Collie.	Oneal.
DeBerry.	Poage.
Holbrook.	Redditt.
Hornsby.	Woodruff.
Murphy.	

**S. J. R. No. 9.**

The Chair laid before the Senate on its third reading the following resolution:

By Senator Woodul:

S. J. R. No. 9, A joint resolution Proposing an amendment to Section 22 of Article IV of the Constitution of the State of Texas, fixing the salary of the Attorney General at Ten Thousand (\$10,000.00) Dollars a year; providing for its submission to the voters of the State of Texas as required by the Constitution, and making appropriation therefor.

Read third time and finally passed by the following vote:

**Yeas—23.**

Beck.	Patton.
Blackert.	Purl.
Cousins.	Rawlings.
Duggan.	Regan.
Fellbaum.	Russek.
Greer.	Sanderford.
Hopkins.	Small.
Martin.	Stone.
Moore.	Woodruff.
Neal.	Woodul.
Pace.	Woodward.
Parr.	

**Nays—8.**

Collie.	Murphy.
DeBerry.	Oneal.
Holbrook.	Poage.
Hornsby.	Redditt.

**House Bill No. 49.**

The Chair laid before the Senate on its second reading the following bill:

By Mr. Alsup and Mr. Lemens:

H. B. No. 49, A bill to be entitled "An Act to repeal Sections 14, 15, 16, 17, 18, 19, 20, 24, and 25, of Chapter 26, Acts of the Regular Session of the Thirty-ninth Legislature of Texas, regulating the testing of automobile lights, and operation of motor vehicles, tractors, motorcycles, and bicycles in Texas, and declaring an emergency."

Read second time.

On motion of Senator Neal, the bill was laid on the table subject to call.

**S. B. No. 158 Re-committed.**

Senator Beck called up S. B. No. 158 from the table.

By unanimous consent, on motion of Senator Beck, the bill was re-committed to the Committee on Finance.

**House Bill No. 180.**

The Chair laid before the Senate on its second reading the following bill:

By Mr. Hankamer, Mr. Parkhouse, Mr. Clayton and Mr. Jackson:

H. B. No. 180, A bill to be entitled "An Act creating the office of county purchasing agent in all counties in this State having a population of more than 100,000 inhabitants and less than 150,000 inhabitants, according to the last preceding Federal census, and wherein is situated an incorporated city of more than 100,000 inhabitants, according to the last preceding Federal census, providing for the appointment of such agent, etc., and declaring an emergency."

Read second time.

By unanimous consent, on motion of Senator Regan, the further consideration of this bill was indefinitely postponed.

**House Bill No. 415.**

The Chair laid before the Senate by unanimous consent the following bill:

By Mr. Leonard, Mr. Engelhard, and Mr. West:

H. B. No. 415, A bill to be entitled "An Act making an emergency appropriation out of the General Revenue of the State for the purpose of conducting a poison bait spray campaign in the Lower Rio Grande Valley to control and eradicate and prevent the spread to other parts of the State of the Mexican fruit fly and to meet the emergency appropriation for this campaign made by the United States Government contingent upon the State of Texas doing its share in the bait spray campaign, and to insure the continuance of the interstate trade relations now enjoyed by Texas, and declaring an emergency."

The rule requiring committee reports to lie over one day was suspended by unanimous consent.

The committee report recommending that the bill be not printed was adopted by unanimous consent.

Committee Amendments Nos. 1 and 2 were adopted.

The bill was read second time and passed to third reading.

On motion of Senator Parr the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 415 was put on its third reading and final passage by the following vote:

**Yeas—31.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Read third time and finally passed by the following vote:

**Yeas—31.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

**House Bill No. 18.**

The Chair laid before the Senate on its second reading the following bill:

By Mr. Anderson of Bexar:

H. B. No. 18, A bill to be entitled "An Act amending Article 6548, Revised Civil Statutes, 1925, so as to authorize the substitution, in whole or in part, of motor bus lines for street and interurban railways by companies authorized to operate a street, or suburban, or interurban railway, authorizing such companies to operate motor buses for the car-

rying of passengers for hire, and providing that such substitution of motor buses shall not impair any of the corporate powers of such corporations heretofore organized."

Read second time.

Committee Amendments Nos. 1 and 2 were adopted.

Senator Fellbaum sent up the following amendment:

Amend H. B. No. 18 by adding the words "and by statutes now in force" at the end of Section 1, line 49, thereof.

**FELLBAUM.**

The amendment was read and adopted.

The bill was passed to third reading.

On motion of Senator Fellbaum, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 18 was put on its third reading and final passage by the following vote:

**Yeas—31.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Read third time and finally passed by the following vote:

**Yeas—28.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Redditt.
Fellbaum.	Regan.
Greer.	Russek.
Hopkins.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Neal.	Woodul.
Oneal.	Woodward.

**Nays—2.**

Holbrook.                  Hornsby.

Present—Not Voting.

Rawlings.

**House Bill No. 15.**

The Chair laid before the Senate on its second reading the following bill:

By Mr. Alexander:

H. B. No. 15, A bill to be entitled "An Act amending Section 10, of Chapter 382, of the General Laws passed by the Regular Session of the Forty-second Legislature relative to the licensing of chauffeurs of trucks, and declaring an emergency."

Committee Amendments Nos. 1, 2, and 3 were adopted.

The bill was read second time and passed to third reading.

On motion of Senator Small the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 15 was put on its third reading and final passage by the following vote:

**Yeas—31.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

Read third time and finally passed by the following vote:

**Yeas—31.**

Beck.	Martin.
Blackert.	Moore.
Collie.	Murphy.
Cousins.	Neal.
DeBerry.	Oneal.
Duggan.	Pace.
Fellbaum.	Parr.
Greer.	Patton.
Holbrook.	Poage.
Hopkins.	Purl.
Hornsby.	Rawlings.

Redditt.  
Regan.  
Russek.  
Sanderford.  
Small.

Stone.  
Woodruff.  
Woodul.  
Woodward.

**Executive Session Set.**

Senator Martin asked unanimous consent that the Senate go into executive session tomorrow morning at 11 o'clock for the purpose of considering Governor's nominations.

Senator Woodward asked unanimous consent that the Senate go into executive session today at 11:45 o'clock a. m. instead of tomorrow.

Objection was heard.

Senator Woodul moved that the Senate go into executive session today at 11:45 o'clock a. m. for the purpose of considering Governor's nominations.

The motion prevailed by the following vote:

**Yeas—27.**

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Small.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
Oneal.	

**Nays—1.**

Sanderford.

**Absent.**

Cousins.                  Stone.  
Greer.

**House Bill No. 168.**

The Chair laid before the Senate on its second reading the following bill:

By Mr. Harman:

H. B. No. 168, A bill to be entitled "An Act making appropriations to pay salaries to judges, and the support and maintenance of the Judicial Department of the State Government for the two-year period beginning September 1, 1933, and ending August 31, 1935; and declaring an emergency."

The committee report recommending that the bill be not printed was adopted by unanimous consent.

Read second time.

On motion of Senator Holbrook, the bill was amended by striking out all below the enacting clause and substituting therefor the wording of S. B. No. 97 below its enacting clause, by the following vote:

Yeas—27.

Blackert.	Martin.
Collie.	Moore.
Cousins.	Murphy.
Duggan.	Neal.
Fellbaum.	Oneal.
Greer.	Pace.
Holbrook.	Parr.
Hopkins.	Patton.

Purl.  
Rawlings.  
Redditt.  
Regan.  
Russek.  
Sanderford.

Small.  
Stone.  
Woodruff.  
Woodul.  
Woodward.

Nays—3.

DeBerry.  
Hornsby.

Poage.

Present—Not Voting.

Beck.

Senator Holbrook sent up the following amendment:

Amend Committee Amendment No. 1 by striking out items 2 and 3, lines 57 to 63, inclusive, page 5, and inserting in lieu thereof, the following:

	For the years ending	
	August 31, 1934	August 31, 1935
2. Constitutional allowance for 59 District Attorneys, at \$500.00, each, per year—	29,500.00	29,500.00
3. Compensation of 53 District Attorneys, at \$20.00 per day, each, for not exceeding the first 155 days of each of the calendar years, 1934 and 1935—	164,300.00	164,300.00
	HOLBROOK.	

Read and adopted.

Senator Holbrook sent up the following amendment:

Amend the Committee Amendment No. 1 by striking out lines 55 and 56, page 5, and inserting in lieu thereof, the following:

Salaries of 127 District Judges and Criminal District Judges, and salaries of District Judge of Special District, composed of Smith and Upshur Counties, for the period, September 1, 1933, to November 15, 1934, and District Judge of Special District, composed of Rusk and Gregg Counties, for the period, September 1, 1933, to November 1, 1934; all at \$4,200.00 each, per year

\$ 541,800.00 \$ 534,975.00  
HOLBROOK.

The amendment was read.

Senator Woodul sent up the following amendment to the amendment:

Amend Committee Amendment No. 2 by inserting in lieu of the figures \$4200.00 wherever the same appear the figures \$4500.00 and amending totals to correspond.

WOODUL.

The amendment to the amendment was read.

Request for Open Session.

The Chair announced that the hour for the executive session had arrived.

Senator Martin asked unanimous consent that the executive session be held in the open and not behind closed doors.

Objection was heard.

Senator Martin moved that the consideration of the Governor's nomination be in open session rather than in closed executive session.

Senator Woodward raised the point of order that this motion was out of order because the executive session had previously been set and the time for it had now arrived; therefore, the only motion in order would be to reconsider the vote by which the executive session was set.

The Chair, Lieutenant Governor Edgar E. Witt, sustained the point of order.

Senator Martin moved to reconsider the vote by which the executive session was ordered.

The motion was lost by the following vote:

Yeas—13.

Cousins.	Neal.
DeBerry.	Parr.
Fellbaum.	Poage.
Greer.	Redditt.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	

Nays—18.

Beck.	Patton.
Blackert.	Purl.
Collie.	Rawlings.
Duggan.	Regan.
Holbrook.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Oneal.	Woodul.
Pace.	Woodward.

#### Executive Session.

The Chair announced that the hour for the executive session had arrived. The Chamber was cleared and the doors were locked.

#### After Executive Session.

At the conclusion of the executive session, the Secretary of the Senate informed the Journal Clerk that the following action had been taken:

Committee Room,  
Austin, Texas, Feb. 23, 1933.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Governor's nominations, to whom was referred the nomination of Mr. F. L. Denison for Highway Commissioner beg leave to report back to the Senate that we have had said nomination under consideration, and I as chairman of said committee am instructed to report back to the Senate the recommendation that said nomination be in all things confirmed.

MARTIN, Chairman.

Not confirmed.

#### Amendment to H. B. No. 18.

Senator Fellbaum received unanimous consent to amend H. B. No. 18 as follows, the amendment having

been inadvertently omitted when the bill was acted on previously by the Senate:

Amend House Bill No. 18 by striking out the entire caption and substituting in lieu thereof the following:

"An Act amending Article 6548, Revised Civil Statutes of 1925, so as to authorize the substitution, in whole or in part, of motor bus lines for street and interurban railways by companies authorized to operate a street or interurban railway by and with the consent of the cities through which said companies operate, authorizing such companies to operate motor buses for the carrying of passengers for hire, and providing that the substitution of motor buses shall not impair any of the corporate powers of such corporations heretofore organized, and providing that companies taking advantage of this Act shall amend their charters and pay the fees provided therefor, and providing that this Act shall not affect any case now pending, and providing that this Act shall not impair the rights of any city under any franchise it may heretofore have granted, and declaring an emergency."

#### Adjournment.

On motion of Senator Small, the Senate, at 12:47 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

#### APPENDIX.

##### Committee on Engrossed Bills.

Committee Room,  
Austin, Texas, Feb. 22, 1933.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Engrossed Bills, have had S. B. No. 256, carefully examined and compared and find same correctly engrossed.

REGAN, Chairman.

##### Committee Reports.

(Majority Report.)

Committee Room,  
Austin, Texas, Feb. 22, 1933.  
Hon. Edgar E. Witt, President of the Senate.

Sir: We, a majority of your Committee on Senatorial Districts, to whom was referred

S. B. No. 159, A bill to be entitled "An Act to apportion the State into Senatorial Districts; naming the counties composing each district; designating the counties to which election returns shall be sent in each district; repealing all laws and parts of laws in conflict herewith; and declaring an emergency."

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do not pass.

SANDERFORD, Chairman.

(Minority Report.)

Committee Room,

Austin, Texas, Feb. 22, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, a minority of your Committee on Senatorial Districts, to whom was referred

S. B. No. 159, A bill to be entitled "An Act to apportion the State into Senatorial Districts; etc., and declaring an emergency."

Have had the same under consideration and beg leave to report that it do not pass, but that the attached committee substitute bill do pass in lieu thereof.

PARR.

By Parr.

S. B. No. 159.

#### A BILL

#### To Be Entitled

An Act to apportion the State into Senatorial Districts; naming the counties composing each district; repealing all laws and parts of laws in conflict herewith; and declaring an emergency.

Section 1. The Senatorial Districts of this State shall be composed respectively of the following named counties, each of which district shall be entitled to elect one Senator, to wit:

No. 1: Bowie, Franklin, Titus, Morris, Cass, Red River, Lamar.

No. 2: Marion, Harrison, Gregg, Rusk, Panola, Shelby.

No. 3: Cherokee, Nacogdoches, Angelina, San Augustine, Sabine, Jasper, Newton, Tyler.

No. 4: Hardin, Jefferson, Orange, Liberty.

No. 5: Walker, Leon, Houston, Trinity, Polk, San Jacinto, Montgomery, Grimes, Madison.

No. 6: Navarro, Henderson, Kaufman, Anderson, Freestone.

No. 7: Camp, Wood, Van Zandt, Smith, Upshur.

No. 8: Brooks, Hidalgo, Willacy, Cameron.

No. 9: Cooke, Grayson, Fannin.

No. 10: Collin, Rockwall, Rains, Hopkins, Delta, Hunt.

No. 11: Dallas.

No. 12: Hood, Somervell, Johnson, Ellis, Hill.

No. 13: McLennan, Limestone, Falls, Milam.

No. 14: Robertson, Brazos, Burleson, Washington, Lee, Bastrop.

No. 15: Fayette, Austin, Waller, Colorado, Lavaca.

No. 16: Harris.

No. 17: Wharton, Matagorda, Fort Bend, Chambers, Galveston, Brazoria.

No. 18: Wilson, Atascosa, Karnes, DeWitt, Victoria, Jackson, Live Oak, Bee, Goliad, Refugio, Calhoun, Aransas, San Patricio.

No. 19: Blanco, Hays, Comal, Caldwell, Guadalupe, Gonzales.

No. 20: San Saba, Lampasas, Llano, Burnet, Williamson, Travis.

No. 21: Erath, Bosque, Hamilton, Coryell, Bell.

No. 22: Montague, Jack, Wise, Denton, Palo Pinto, Parker.

No. 23: Hardeman, Foard, Knox, Wilbarger, Wichita, Clay, Baylor, Archer, Young.

No. 24: Haskell, Throckmorton, Scurry, Fisher, Jones, Shackelford, Stephens, Mitchell, Nolan, Taylor, Callahan, Eastland.

No. 25: Sterling, Coke, Tom Green, Runnels, Coleman, Irion, Schleicher, Comanche, Mills, Gillespie, Menard, Kimble, Mason, McCulloch, Brown.

No. 26: Kerr, Kendall, Bandera, Bexar.

No. 27: Zavalla, Frio, Dimmit, La Salle, McMullen, Webb, Duval, Jim Wells, Nueces, Kleberg, Kenedy, Jim Hogg, Starr, Zapata.

No. 28: Tarrant.

No. 29: El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Midland, Glasscock, Jeff Davis, Ward, Crane, Upton, Pecos, Reagan, Crockett, Val Verde, Edwards, Sutton, Terrell, Brewster, Presidio, Real, Kinney, Uvalde, Medina, Maverick.

No. 30: Bailey, Lamb, Hale, Floyd, Motley, Cottle, Cochran, Hockley, Lubbock, Crosby, Dickens, King, Yoakum, Terry, Lynn, Garza, Kent, Stonewall, Gaines, Dawson, Borden, Andrews, Martin, Howard.

No. 31: Dallam, Sherman, Hansford, Ochiltree, Lipscomb, Hartley,

Moore, Hutchinson, Roberts, Hemphill, Oldham, Potter, Carson, Gray, Wheeler, Deaf Smith, Randall, Armstrong, Donley, Collingsworth, Farmer, Castro, Swisher, Briscoe, Hall, Childress.

Sec. 2: All laws and parts of laws in conflict herewith are hereby expressly repealed.

Sec. 3: There being no Act upon the Statute Books carrying out the provisions of Section 28, Article 3, of the Constitution of Texas which makes it mandatory upon the Legislature to reapportion the State into Senatorial Districts after each decennial census, and it being desirous of passing an Act of this sort at this session, creates an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read upon three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

Committee Room,

Austin, Texas, Feb. 23, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Finance, to whom was referred

H. B. No. 415 (Appropriation to fight fruit fly).

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with committee amendments and be not printed.

HOLBROOK, Chairman.

#### Committee Amendment No. 1.

Amend House Bill No. 415 as follows:

Strike out the words "General Fund in the State Treasury not otherwise appropriated" in line 3 of Section 1 of the typewritten bill and insert in lieu thereof the following: "funds and in the amounts appropriated to and/or held by the Department of Agriculture as follows: \$3300.00 appropriated by House Bill No. 500, more specifically known as Chapter 244, Acts Regular Session of the 42nd Legislature; \$1000.00 out of funds appropriated by the Regular Session of the 42nd Legislature in the general departmental appropriation Act to the gin division of the Department of Agriculture; and \$400.00 and \$2800.00 out of funds appropriated to the Department of Agriculture by House Bill No. 539 Acts of the Regular Session 42nd Legislature, and which Act was repealed by House Bill No. 298, Acts of the Regular Session 43rd Legislature, provided, that if the amount remaining in this latter fund has reverted to the general fund the amounts of \$400.00 and \$2800.00 are hereby re-appropriated for the use and benefit of the purposes herein set out."

#### Committee Amendment No. 2.

Amend the caption of House Bill No. 415 to conform to the body of the bill.

**In Memory**  
**of**  
**James Richard Bond**

---

**SENATE SIMPLE RESOLUTION NO. 57.**

Senator Greer sent up the following resolution:

WHEREAS, On February 17, 1933, the All-Wise Creator called from the sphere of this life, Mr. James Richard Bond, Sr., of Terrell, Kaufman County, Texas, the father of Judge Thos. R. Bond, a former member of the House of Representatives; and

WHEREAS, James Richard Bond, Sr., was born at Oxford, Mississippi, May 14, 1840, and at the age of twenty years enlisted in the Confederate service and served throughout the Civil War as Regimental Sergeant of the Twenty-eighth Texas Cavalry, participating in the battles of Mansfield, Pleasant Hill and Salina, Arkansas, during the war; and

WHEREAS, At his death he was one of the few surviving members of the J. E. B. Stuart Camp of Confederate Veterans, in which he always took a very active interest; and

WHEREAS, The members of this body are deeply grieved over the passing of this useful citizen and sympathize with the members of his family; now, therefore, be it

RESOLVED, by the Senate of Texas, That we extend our sincere sympathy to the children of deceased, and that a page in the Journal be set apart for the record of this resolution; and that the Secretary of the Senate be instructed to send an enrolled copy of this resolution to Judge Thos. R. Bond.

GREER,  
PATTON,  
WOODWARD,  
BECK,  
BLACKERT,  
COLLIE,  
COUSINS,  
DeBERRY,  
DUGGAN,  
FELLBAUM,  
HOLBROOK,

HOPKINS,  
HORNSBY,  
MARTIN,  
MOORE,  
MURPHY,  
NEAL,  
ONEAL,  
PACE,  
PARR,  
POAGE,

PURL,  
RAWLINGS,  
REDDITT,  
REGAN,  
RUSSEK,  
SANDERFORD,  
SMALL,  
STONE,  
WOODRUFF,  
WOODUL.

Read and adopted unanimously by a rising vote.

**SUPPLEMENT—(Continued).**  
**Thursday, Feb. 23, 1933, 2:00**  
**o'clock p. m.**

(The Committee being called to order by the Chair, the following proceedings were had, to-wit:)

The Chair: Gentlemen, what is your pleasure?

Senator Woodward: Several days ago when Judge Sims of Paint Rock was on the stand he was requested to forward certified copies of these contracts of sale of the securities to the Security Trust Company, and certified copy of their depository contract and certified copy of their agreement with the State Highway Commission in respect to placing in escrow certain securities to secure the State Highway Commission. Those have been forwarded to me and I am now delivering them to the Secretary.

The Chair: They were supposed to be read into the record?

Senator Woodward: I think so, yes, sir. I will deliver them to the Secretary to be put in the record.

Office of County Judge,  
 Paint Rock, Texas.

Feb. 21, 1933.

Honorable Walter C. Woodward,  
 State Senator, Senate Chamber,  
 Austin, Texas.

Dear Senator: In accordance with instructions of the investigating committee I hand you herewith:

Copy of sales agreement on bonds to Security Trust Company of Austin.

Copy of depository agreement with Security Trust Company.

Copy of agreement as to escrowing checks between the Commissioners Court of Concho County and the State Highway Commission.

I was also instructed to forward a list of securities to the Senate, but understand that they already have such list. If one is required from me, please wire me and it will be forwarded at once.

Yours very truly,

(Signed) O. L. SIMS,  
 OLS:S County Judge.  
 The State of Texas,  
 County of Concho.

This agreement made and entered into by and between Security Trust Company of Austin, Austin, Texas, a corporation, and Concho County, Texas, Witnesseth:

That Whereas, the Security Trust Company of Austin has been desig-

nated by Concho County as special depository for the proceeds from the sale of \$285,000.00 road bonds of Concho County Road District Number One, said Concho County, has directed and does hereby direct that such proceeds be deposited with said Security Trust Company of Austin in accordance with the schedule set out below, as soon as the securities hereinafter described shall have been deposited with the American National Bank, Austin, Texas, as trustee, and said trustee shall have agreed in writing to serve as such trustee and to hold securities in such capacity.

\$35,000	May 10th, 1931.
25,000	June 1st, 1931.
25,000	July 1st, 1931.
25,000	August 1st, 1931.
25,000	September 1st, 1931.
25,000	October 1st, 1931.
25,000	November 1st, 1931.
25,000	December 1st, 1931.
25,000	January 1st, 1932.
25,000	February 1st, 1932.
25,000	March 1st, 1932.

It is understood and agreed that should the bonds be taken up and the proceeds deposited sooner than the above schedule provides the county judge shall notify the American National Bank, Austin, Texas, said trustee, in writing.

For the purpose of securing such deposits to Concho County said Security Trust Company of Austin agrees to deposit with the American National Bank, Austin, Texas, a national banking corporation, as trustee, securities of the following kind, in an amount equal to the Concho County funds on deposit in said Security Trust Company, to-wit: United States Bonds, certificates of indebtedness of the United States, bonds of the State of Texas, or any city, town, county, independent school district, common school district, bonds issued under the Federal Farm Loan Act, road district bonds or other municipal securities authorized by law, which said securities are the property of the Security Trust Company of Austin but which are to be held by said American National Bank of Austin, Texas, as security for the performance by Security Trust Company of Austin of the obligations herein undertaken by it, it being understood and agreed that as said Security

Trust Company of Austin shall have paid out on proper vouchers any portion of said deposit it shall have the right, with the consent of such trustee, to withdraw securities deposited with such trustee, to an amount equal to the amount so withdrawn, and it being further understood and agreed that the Security Trust Company of Austin shall have the right to substitute for any one or more of said securities deposited with said trustee under this agreement other securities consisting of United States Bonds, certificates of indebtedness of the United States, bonds of the State of Texas, or any city, town, county, independent school district, common school district, bonds issued under the Federal Farm Loan Act, road district bonds, or other municipal securities authorized by law, of the same amount, whenever it shall desire to sell or otherwise dispose of any one or more of such securities so deposited, provided that at all times the amount of such securities so deposited with said trustee shall be equal to at least the amount of such Concho County Road District Number One funds remaining with the Security Trust Company, Austin.

It is further agreed and understood that said money is to be paid out only upon checks duly and legally authorized and drawn by the county treasurer of Concho County in payment for construction work and expenses incident to the issuance of said bonds and matters incident thereto, as contemplated by the purpose expressed in the bonds, the proceeds of which constitute this deposit.

It is further agreed that in consideration of the premises the Security Trust Company of Austin will pay to Concho County Road District Number One interest on average daily balances at the rate of two (2%) per centum per annum, such interest to be computed and paid monthly, as of the first day of each month, which interest is to be credited to said Concho County Road District Number One and notice thereof, in writing, furnished to the county treasurer of Concho County, Texas.

In Witness Whereof, Security Trust Company of Austin, Austin, Texas, a corporation, organized un-

der the banking laws of the State of Texas, and domiciled in Austin, Travis County, Texas, has caused these presents to be signed by E. P. Cravens, its vice-president, hereunto duly authorized, and its corporate seal hereto affixed, and Concho County, Texas, has caused these presents to be signed by O. L. Sims, its county judge, hereunto duly authorized, this the 27th day of April, A. D. 1931.

Security Trust Company of Austin,  
Austin, Texas.

By E. P. Cravens, Vice President.  
(Corporate Seal)

Concho County, Texas.

By O. L. Sims, County Judge.

At a special meeting of the commissioners court of Concho County, Texas, with all members present, the foregoing contract between the Security Trust Company of Austin, Texas, and Concho County came on to be considered, and same having been fully considered and understood it is hereby ordered ratified and confirmed, this 27th day of April, A. D. 1931.

A. R. Holman, Commissioner Precinct No. 1.

H. G. Stephenson, Commissioner Precinct No. 2.

R. P. Cross, Commissioner Precinct No. 3.

E. M. Williams, Commissioner Precinct No. 4.

State of Texas  
County of Travis

The American National Bank, of Austin, Texas, a banking corporation, organized under the Acts of Congress of the United States of America, domiciled in Austin, Travis County, Texas, acknowledges receipt from the Security Trust Company of Austin of securities mentioned in the foregoing contract, and binds itself to hold the same as Trustee, as provided for in said above contract agreement between Concho County, Texas and the Security Trust Company of Austin.

Witness Our Hands, at Austin, Texas, this the 9th day of May, A. D. 1931.

The American National Bank of Austin, Texas.

(Corporate Seal)

By L. D. Williams, Cashier.

Filed May 11, 1931.

Leo Molloy, County Clerk, Concho County, Texas.

The State of Texas  
County of Concho

I, Leo Molloy, County Clerk and Ex-officio Clerk of the Commissioners Court in and for said County and State do hereby certify that the within and foregoing is a true and correct copy of depository agreement between the Security Trust Company of Austin, Texas, and the County Commissioners Court of Concho County, Texas, as same appears of record in Volume F, pages 481 and 482, minutes of the Commissioners Court of Concho County, Texas.

Given under my hand and seal of office, this the 20th day of February, A. D. 1933.

(Seal)

LEO MOLLOY,

County Clerk and Ex-Officio Clerk of the Commissioners Court of Concho County, Texas.

Whereas, Concho County, Texas, has on deposit with the Security Trust Company, of Austin, Texas, funds in the amount of Sixty Three Thousand Four Hundred Ninety-three and 40/100 (\$63,493.40) Dollars, proceeds of bonds to aid in the construction and improvement of certain State designated highways in said county, for which deposit of funds said Trust Company issued to said County its Certificate of Deposit; and

Whereas, Said County received and now holds certain collateral from said Security Trust Company to secure said deposit of funds, as listed in the collateral agreement with said Trust Company, copy of which list is hereto attached; and

Whereas, Said Trust Company is not now in available cash funds to meet warrants of said County drawn upon or against said deposit or credit, to reimburse the Highway Department (or State Highway Fund) for advances made by the Department for account of said County as the same become due, as the work of such construction proceeds; and

Whereas, Necessity exists that said Highway Department be secured for such advances;

Now, Therefore, said Concho County, through its commissioners court and county judge, does hereby, in consideration of the premises, allocate, set aside and pledge to the

Highway Department of Texas, the funds so on deposit with said Trust Company, together with all the collateral received and held by said County as security for said deposit and funds, to secure all sums due the Highway Department, or that may become due to said Highway Department, by said County as and for said County's share or amount of such construction which has been or may be advanced or paid out by the Highway Department for account of such County on such construction or improvement until the entire amount of such advances shall be paid and satisfied in full according to the contract or arrangement entered into by said County and the Highway Department; this action being necessary to enable the Highway Department to carry on the work on construction now under contract and under way.

It is further agreed by and on behalf of said County, that such deposit of funds with said Trust Company shall not be withdrawn or waived or diverted to any other use or purpose without the written consent of the State Highway Commission, until the full purpose of this pledge and agreement shall have been fully fulfilled. And it is further agreed by and on behalf of said County that the said collateral to secure said deposit of funds shall not be withdrawn, diverted, substituted, waived or released in whole or in part, without the written consent of the Highway Commission.

In consideration hereof the Highway Department will carry on and complete the project or projects now under contract in said County, for which said funds are paid, and will advance, for the time being, the County's share of the same for account of said County.

That as to any further construction of highway projects in said County, under the arrangement and pledge herein provided, the Highway Commission does not undertake to bind the Department; but such additional construction, if any, will be decided upon from time to time by the Highway Commission under arrangements that may be entered into by the parties hereto,

This Contract or Agreement, which is executed in duplicate, is to be spread upon the proper minutes of the County Commissioners Court of

said County, and a duplicate original placed in the files of the Highway Department.

Dated this 8th day of February, 1932.

O. L. SIMS,  
County Judge.

(Seal)

A. R. Holman, Commissioner, Precinct No. 1.

H. G. Stephenson, Commissioner, Precinct No. 2.

R. P. Cross, Commissioner, Precinct No. 3.

E. M. Williams, Commissioner, Precinct No. 4.

Texas State Highway Department.

By W. R. Ely

Cone Johnson

(Seal of Highway Department)

The Security Trust Company hereby recognizes the foregoing agreement between the State Highway Commission and Concho County, and agrees to the carrying out of the same as contained in said agreement.

Dated this 12th day of February, A. D. 1932.

(Cor. Seal)

E. P. CRAVENS,  
Vice-President.

The American National Bank hereby recognizes the foregoing agreement between the State Highway Commission and Concho County, and agrees to the carrying out of the same as contained in said agreement, and hereto attaches a list of the collateral held by it as Trustee to secure the deposit of said County in Security Trust Company.

Dated this \_\_\_\_\_ day of February, A. D. 1932.

\_\_\_\_\_  
President.

The State of Texas  
County of Concho

I, Leo Molloy, County Clerk and Ex-officio Clerk of the Commissioners Court of said county and State, do hereby certify that the within and foregoing is a true and correct copy of Contract and Agreement between the State Highway Commission and the County Commissioners Court of Concho County securing said State Highway Commission for advances made by said Department for account of said county, and pledging collateral by said County to said Department for such advances made, etc., as same appears of record in Vol-

ume F, page 533 and 534, Minutes of the Commissioners Court of Concho County, Texas.

Given under my hand and seal of office, this the 20th day February A. D. 1933.

LEO MOLLOY,  
County Clerk and Ex-Officio Clerk  
of the Commissioners Court of  
Concho County, Texas.  
(Cor. Seal)

Be it remembered that on Monday the 27th day of April, A. D. 1931, there came on and was held a Special Called Session of the Hon. County Commissioners Court of Concho County, Texas; present and presiding, Hon. O. L. Sims, County Judge, A. R. Holman, Commissioner of Precinct No. 1, H. G. Stephenson, Commissioner of Precinct No. 2, R. P. Cross, Commissioner of Precinct No. 3, E. M. Williams, Commissioner of Precinct No. 4, and Leo Molloy, County Clerk, when the following proceedings were had, to-wit:

Pursuant to advertisements, bids were opened as follows on the \$285,000.00 Road District Bonds of Road District No. 1, Concho County, Texas:

1. J. M. Radford Grocery company of Abilene and Citizens National Bank of Abilene: \$285,000.00 and accrued interest on deferred deliveries.

2. Security Trust Company of Austin, Texas, and Dallas Union Trust Company of Dallas, Texas; \$285,000.00 plus a premium of \$4,500.00 plus accrued interest on deferred deliveries.

The proposal of the Security Trust Company of Austin, Texas, and the Dallas Union Trust Company of Dallas, Texas, as follows:

To pay \$285,000.00 plus a premium of \$4,500.00, plus accrued interest on deferred deliveries is hereby accepted by motion made by A. R. Holman, Commissioner of Precinct No. 1, and duly seconded by R. P. Cross, Commissioner of Precinct No. 3; upon the question being called for, the following voted aye:

A. R. Holman, H. G. Stephenson, R. P. Cross and E. M. Williams,—none voting no and by the same vote, the following is ordered spread upon the minutes of the court:

## Order Confirming Sale of Bonds

State of Texas  
County of Concho

On this the 27th day of April, 1931, the Commissioners Court of Concho County, Texas, convened in regular session at a special meeting, with the following members present:

O. L. Sims, County Judge.

A. R. Holman, Commissioner, Precinct No. 1.

H. G. Stephenson, Commissioner, Precinct No. 2.

R. P. Cross, Commissioner, Precinct No. 3.

E. M. Williams, Commissioner, Precinct No. 4.

and among other proceedings had, was the following:

Whereas, This court has heretofore advertised for bids for the purchase of the \$285,000.00 road bonds of Road District No. 1 of Concho County, Texas, dated April 10, 1931, maturing serially in thirty years, and bearing interest at the rate of five and one-half per cent per annum payable March 10, 1932, and semi-annually thereafter on the 10th day of September, and the 10th day of March each year; and

Whereas, It appears that the bid of the Security Trust Company of Austin, Texas, and the Dallas Union Trust Company of Dallas, Texas, bidding jointly for the sum of \$289,500.00 plus accrued interest to dates of deliveries of bonds was the best bid received by the court;

Therefore be it ordered by the Commissioners Court of Concho County, Texas:

That the bid of said Security Trust Company of Austin, Texas, and the Dallas Union Trust Company of Dallas, Texas, be, and the same is hereby accepted, and it is ordered that said bonds be delivered to said Company upon payment of the purchase price above named.

The above order being read it was moved by Commissioner A. R. Holman, and seconded by Commissioner R. P. Cross, that the same be passed. Thereupon, the question being called for, the following members of the court voted aye: A. R. Holman, H. G. Stephenson, R. P. Cross and E. M. Williams, and the following voted no: none.

O. L. SIMS,  
County Judge Concho County, Texas.

The State of Texas  
County of Concho

I, Leo Molloy, County Clerk and Ex-Officio Clerk of the Commissioners Court of Concho County, Texas, do hereby certify that the within and foregoing is a true and correct copy of contracts for sale of bonds and order confirming sale of bonds for road district No. 1, as same appears of record in Volume F, page 478, Minutes of the Commissioners Court of Concho County, Texas.

Given under my hand and seal of office, this the 20th day of February, A. D. 1933.

(Seal) LEO MOLLOY,  
County Clerk and Ex-Officio Clerk  
of the Commissioners Court, Concho County, Texas.

The Chair: I will state for the benefit of the Senators who have just come in that there has been offered to the Secretary certified copies of the contracts called for from the county judge of Concho County the other day when he was on the stand. If there is no objection those contracts will be read in evidence. Call your next witness, please. Do any of you have a witness available that you want to examine?

Senator Martin: I thought Mr. Carter was still on the stand at recess?

The Chair: Mr. Carter.

(Thereupon Mr. W. Frank Carter resumed the witness stand for further examination.)

Examination by Senator Martin.

Q. Mr. Carter, as auditor and in auditing the Highway Department, what are the facts with reference to whether or not you had occasion to make any investigation with reference to any particular projects in this State as to the materials that might have gone into the road?

A. We investigated the materials, sir, on only one project.

Q. Is that reported in this record here?

A. Yes, sir.

Q. Where is that reported?

A. It begins on page 51 of the report.

Q. On page 51?

A. Yes, sir.

Q. That is volume 10, is it, Mr. Carter?

A. Yes, sir.

Q. Is that the project you call

S. A. P. 677, B, C, and D, 11, Highway 94, in Trinity County?

A. Yes, sir.

Q. What does that S. A. P. mean?

A. That designates what they call a State project.

Q. A State aid project?

A. Yes, sir.

Q. What is the B. C. there for?

A. Those are projects designations the Highway Department uses to determine the different sections of the road, I believe, for identification.

Q. What length is that road?

A. The entire project covered a distance of 22.189 miles, the best we can get from the record.

Q. What was the occasion for your investigating that particular project?

A. That project was mentioned to us by several persons, and particularly on a trip over East Texas I passed over a part of the road and my attention was called to the fact it had been scarified.

Q. It had been what?

A. What they call scarified. They had taken their machinery and broken up the top at that time and I had one of my men look into the project to see how long it had been down, and that is when we began the investigation.

Q. 22.189 miles. What did you find?

A. We found by measurement with the speedometer that there were approximately, as close as we could measure it, 14 1/2 miles of that pavement that had been torn up. The best information we could get as to the date it was torn up showed that it was torn up during March and April, as near as we could get to it, of 1931. We then investigated the date it was apparently completed and it showed to have been completed in August of 1929, consequently it had been down some eight or nine months, I think, from the time it was completed until it was torn up again.

Q. Go ahead with it. After you made the test what did you find?

A. We went into that. We were given various interpretations as to the reason it had gone bad by people that would tell us about it. Several men from East Texas talked to me at different times. They would come to us with those things. So, I had my men first make a test to see whether these materials that should

have gone into the roads actually went into it.

Q. Now then, you had the plans and specifications before you, did you?

A. We got them out of the Highway Department files.

Q. You got the plans and specifications?

A. Yes, sir.

Q. That is, what was required to go into it?

A. Yes, sir.

Q. And you made other tests out there to see if they went into it?

A. We made a test to see whether these materials called for and the materials paid for on the final estimate of the contractor went into the road.

Q. Did you find it, or not?

A. As near as we could calculate it we estimated there was a shortage of approximately thirty thousand dollars of gravel, at the price paid. I may be able to give you the exact figures.

Q. You worked it out that there would be a loss of between fifty and seventy-five thousand dollars on the project?

A. We worked out that the loss on the gravel would be approximately thirty thousand dollars, and the work of retopping the road, the best information we could get without having engineers, was it would probably cost some fifty to seventy-five thousand dollars to repair it.

Q. Now, did you learn what particular person was in charge of that particular road when it was under course of construction?

A. The resident engineer.

Q. Who?

A. C. C. Cannon.

Q. Do you know whether or not he is still with the Department?

A. The last information I had was that he was not. I haven't made any inquiry lately.

Q. Did you or not report this particular matter to the Highway Department?

A. Yes, sir.

Q. Do you know whether or not they made any effort to check up and verify to see whether or not your estimates were correct?

A. I don't know what investigation they made.

Q. You don't know what they did about it?

A. No, sir.

Q. Was there any other test that you made on any other road?

A. That is the only one that we were able to go into the construction materials. We were limited by the amount of work we could do by the amount of appropriation we had available, and we found in testing this road project that it was such an enormous job to try to check materials, and we had no engineer on our staff, so we merely have reported in this report that we did not check construction and materials, and if they wanted it checked we recommended an appropriation of a hundred thousand dollars to complete the work.

Senator Martin: That is all at this time.

Questions by Senator Sanderford.

Q. In this report on page 51 of Vol. 10 various other discrepancies were noted. Can you enumerate some of those discrepancies, Mr. Carter?

A. They are set out in detail in this report, Senator. I might just call you some of the hearings from this report, if you care to hear them.

Q. They are set out in detail in the report?

A. Yes, sir. If you care to hear them.

Q. All right.

A. Particularly the differences were in connection with gravel. Without knowing the exact process which this goes through, you may not be able in all cases to understand these references, but I will be glad to give you any additional information. As the gravel is laid, there are what is called gravel haul tickets issued to the drivers who haul the gravel.

Q. Was this being done under contract?

A. Yes, sir.

Q. Who was the contractor?

A. Mr. J. C. Kelly of Trinity. Now, we found those gravel tickets were then summarized by the bookkeeper on the job in a memoranda summary book, and then they were totaled and are the basis on which the contractor is paid in his estimates for the amount of gravel. We found that the gravel tickets were not in agreement with his book, which is used as the basis for paying the drivers. We also found that the summary showing how much gravel was laid on each hundred foot

station was not in agreement with the check of the yards; in other words, we found this: that on some stations according to the yardage shown by the gravel tickets there would be no gravel on a certain stretch of road, and, in one case, I think we found one place for a distance of four hundred feet that the tickets didn't show any gravel laid, but the actual road showed that there was gravel.

Q. What did the specifications call for?

A. A certain number of yards per foot, 38.89 or about 39 yards to each hundred foot station. We found other stations that according to the tickets the gravel would be piled up, and from the best information we could get there was only a normal amount, which indicated the tickets were not true as to the location of the gravel on the road.

Q. Before we get away from that; as a whole, over that entire mileage, did you find that they were shorted about \$30,000 worth of gravel?

A. Approximately that; we made a calculation and our calculation was 8157.9 yards.

Q. And that represented about a \$30,000 loss to the State; all right, go ahead.

A. Now, we also found in examination of these gravel tickets that in some places, the tickets would be signed with the name of a certain checker, but a comparison of the handwriting showed that it was not that checker's signature. In other places, we found some tickets signed and still in the book that hadn't been delivered and in one or two places we found that although these tickets had not been delivered to the drivers that they had been included in and paid the contractor in his estimate. We found various differences, little things; it is pretty hard to pick them all out here, but in our further investigation, when we began to check into this writing of tickets, we questioned the gravel inspectors and several of them admitted to us that they didn't write the tickets as the gravel was dumped on the road, but wrote them in advance, either at the office or at home, and then they pulled the tickets out of the book as the gravel was dumped. We found one book almost completely filled out, and

signed, but that book was still in the office; consequently we knew that those tickets were signed before the gravel was dumped; that contractor, however, was not paid for that book.

Q. You say that the detailed report of the findings of this investigation was submitted to the Highway Department and the matter was referred by them to the Attorney General to determine whether or not recovery could be made; do you mean that the Auditor's Department or the Highway Commission referred it to the Attorney General?

A. As I understand it, the Highway Commission referred it to the Attorney General, after we reported it to the Highway Commission.

Q. You did not report it to the Attorney General yourself?

A. No, sir, I think the Highway Commission did, because I have since that time talked to one of the Attorney Generals about it.

Q. Do you know whether or not there has been any effort made to recover that \$30,000 loss?

A. I do not, no, sir, but the Attorney General's office might know.

Q. Well, that's \$30,000; now, back to the Athens bank, as an auditor and as an efficiency expert, is there any way that you know of that \$60,000 loss can be recovered by the State?

A. Senator, I can't tell you positively that it can be recovered, but there are certain sureties who signed the surety bonds, and it might be possible to recover from the sureties.

Q. And you don't know whether there is any effort being made to recover either of those losses or not?

A. The last information I had on it was in a communication that I got from one of the Assistant Attorney Generals just a few days ago; I discussed it with them informally several times. I would be glad to read that communication to you if you care to have it.

Q. All right.

A. Letter dated Feb. 16th, 1933.

"Mr. Frank Carter, First Assistant State Auditor, Capitol.

Dear Sir: Attorney General Allred called me in this morning and asked me the status of the claim of the State against the failed Athens National Bank.

You will recall that this claim

arose by virtue of the fact that the Athens National Bank before its failure was the county depository of Henderson County and that funds belonging to the State of Texas and collected by the tax collector of that county were on deposit with the bank at the time it failed, as was certain escrow money belonging to the Highway Department.

Several weeks ago you mentioned this claim to me and asked the status of same, and I told you that we had been trying for several months to get a definite statement from the Highway Department of the exact amount of escrow money which was on deposit for the benefit of the Highway Department in the bank when it failed, and that we had not been able to secure the information from the Highway Department which we considered necessary for a suit to be filed against the sureties on the bond of the county depository; that we wanted to incorporate the claim for the escrow money in the same suit that was brought against the sureties on the money deposited by the tax collector.

You will recall that you then stated that you had in your files complete information with reference to this escrow account and could furnish full information with regard to the same; further that I told you that it would be a great accommodation to the Attorney General's Department if you would give us this information, and you promised that within a few days after the conversation you would come down and see our Mr. Johnson, who was working with me on this case, and give him the details of the claim of the Highway Department.

After talking to Attorney General Allred about the case I learned from Mr. Johnson that you have not yet conferred with him in regard to this matter or furnished him with any information. I know that you have been terribly busy in the performance of your other duties, but I shall appreciate it very much if you will confer with Mr. Johnson in this regard as soon as you can possibly do so.

Thanking you, I am,

Yours very truly,  
MAURICE CHEEK,  
Assistant Attorney General."

Q. Do you know any reason why the State Highway Department didn't furnish him with that information that he was asking for, so that he could go ahead?

A. I have no information on that.

Q. Do you think it was because of their bookkeeping system being inadequate?

A. Well, I think they should be able to dig it out of their records; it might take a little digging to get it, but I think they ought to be able to dig it out.

Q. But that didn't have anything to do with the \$30,000 loss from Kelly?

A. No, sir, this was particularly in reference to the case against the Athens National Bank.

Q. I want to submit two letters, photostatic copies of which were taken from the files of the State Auditor's office; I would like for the secretary to read them and I would like for them to go in the record.

Senator Woodward: Mr. Chairman, I want to object to that character of testimony: it is just an ex parte hearsay statement by way of a letter, probably complimenting the State Auditor for something he has said or done that is not evidence.

Senator Sanderford: Well, I can't see that there should be any objection to them; it is a statement from a citizen about this condition over in Athens.

Senator Woodward: Bring him down here and question him under oath.

The Chair: This party is not under oath, Senator. It is in the nature of an ex parte statement, and I can't see how it would throw any light upon whether or not the Highway Commission has been short or not; I don't believe it is admissible.

Senator Sanderford: Are you going to rule both of them out?

The Chair: I don't know what the other one is.

Senator Sanderford: Mr. Chairman, the Senator from Coleman and the Senator from Wise read into the record their personal opinions; they were not under oath, and I can't see any reason why a citizen should not be permitted to put his into the record.

The Chair: Senator, I submitted the matter to the other members of

the Board of Managers and I don't believe that there could be any serious contention that these letters are admissible in evidence. Senator Martin, have you seen these letters?

Senator Martin: I have not, no sir; let me look over them, please; I don't have the least idea what they contain.

Q. (By Senator Sanderford) This letter signed by Mr. J. H. Lucas, you don't know what his business is over there, do you?

A. I don't know him, sir.

Q. Is there any objection to my reading the letters?

Senator Woodward: Yes, sir, I am objecting to it.

The Chair: I will state that I have received a number of letters similar to those, pro and con, and I don't think they are admissible in evidence.

Senator Sanderford: I want to request the Board of Managers that they issue process for Mr. J. H. Lucas of Athens, Texas.

Senator Woodward: I have no objection.

The Chair: The Secretary will please prepare process for Mr. Lucas.

Senator Sanderford: And also for Mr. H. E. Bly, if you please.

The Chair: Continue with this witness, please.

Questions by Senator Sanderford.

Q. Mr. Carter, was the matter of the northwest highway in Dallas County brought to the attention of the Auditor's Department, from the standpoint of investigating the amount of materials that went into that highway?

A. I think someone mentioned that to Mr. McNally and Mr. Waters of the Attorney General's Department; that was just a short time ago, and our report was already in the hands of the printers and we were without any funds to make further investigation.

Q. You didn't make an investigation of that?

A. No, sir.

Q. Do you know what gentleman of the Highway Department investigated that and reported a shortage of materials on that job?

A. No, sir; I do not.

Q. You don't know whether it was Mr. Gene Knox or not?

A. I don't know, sir.

Q. Do you remember the nature of the complaint when it was called to your attention?

A. All the information I have on it is the information that Mr. Waters and Mr. McNally gave me, and if I remember rightly they said that they had been informed that the required amount of cement was not used in the construction of the road.

Q. There was one sack short per cubic yard, wasn't there?

A. I don't remember the exact figure.

Q. That was the contract of Mr. J. F. Dexter of Dallas, was it?

A. That wasn't Mr. Dexter; I didn't make an investigation to trace that down; that came up just a few weeks ago, and we had gone as far as we could go in the investigation.

Q. Mr. Carter, on page 2, of the 10th volume of the Auditor's report with reference to the State Highway Department you give some figures down there with reference to employment during the months of May, June, July, and August in the maintenance department of 1932?

A. Yes, sir.

Q. You all made some investigation of those expenditures?

A. We made an investigation of the number of employees as reflected by reports from the division offices of the Highway Department.

Q. Tell us what your findings were?

A. You want me to read the figures for these months?

Q. Yes, that would be all right.

A. The information showed in the months of May, 1931, there were five thousand five hundred and forty-nine employees; May, 1932, it showed there were seven thousand two hundred and ninety-nine employees, an increase of one year over the other of seventeen hundred and fifty. The month of June, 1931, there were seventy-seven hundred and ninety-three employees; in the month of June, 1932, there were seven thousand six hundred and twenty-eight employees, a decrease of one hundred and forty-five. For the month of July, 1931, there were six thousand six hundred and ninety-five employees, and in the month of July, 1932, there were eighty-nine hundred and ninety-seven employees, an increase of two thousand three

hundred and two over the prior year. For the month of August, 1931, there were seven thousand two hundred and ninety-four employees, and in August, 1932, there were eleven thousand, nine hundred and sixteen employees; an increase of four thousand six hundred and twenty-two.

Q. (By Senator Woodward) What division was that?

A. That was in the Maintenance Division.

Q. (By Senator Sanderford) That was the total of the Maintenance Department only?

A. Yes, that was maintenance employees.

Q. Now, during July, 1932, there were two thousand three hundred and two additional employees over July, 1931?

A. Yes, sir.

Q. That was according to the records of the Highway Department?

A. Yes, sir, according to the reports.

Q. July, 1932, was the month of the first primary?

A. Yes, that is a matter of record.

Q. Now, in August, the month of the second primary, there were four thousand, six hundred and twenty-two additional men employed in the maintenance department?

A. Yes, there is a difference between 1931 and 1932.

Q. That is an addition over the same month of the year before?

A. Yes, sir.

Q. What do you find in the records, if anything, to show that through either weather conditions or otherwise, that those two special months of June and July, 1932, would require those extra men in the Maintenance Department to keep the roads in good shape?

A. We requested information from Mr. Early, the Maintenance Engineer. We did not have employees enough or money enough on hand to make an additional check of all of the reasons, consequently we asked him for the reasons, and that is quoted in full in our report.

Q. What page? Find it and read it, please.

A. It begins on page 33 and goes on over to page 34, of Volume 10.

Q. I think it would be well to read that reference, if you will.

A. Read the entire matter?

Q. Yes.

A. Mr. Early's letter is quoted as follows:

"In compliance with your verbal request transmitted to me by Mr. W. E. McNally, I have gone over your report on the number of employees engaged in maintenance work the fiscal years 1931-32 and 1930-31.

"I will outline the various factors which enter into and cause the fluctuations in the number of employees over a year's period.

"First, is the seasonal increase, which you will note from the spring to late summer months. If you will examine our payrolls for any year you will note that our forces steadily build in number from April to September. A great part of our work must be done in the summer months if we are to avoid a costly overhead from bad weather delays during other seasons. This seasonal work usually gets well started by May 1st and steadily increases through August. After that month it begins to decline, reaching its lowest point in January and February.

"Second, our budget system requires that our expenditures be anticipated to allow for possible emergencies. A portion of each Division allotment is placed into a retainage fund and held back for such use. By July the uncertain weather period has largely passed permitting the use of this retainage fund for any needed general maintenance work which may have been delayed. The fact that our fiscal year ends during the most ideal period for construction work makes the month of August always a peak in general maintenance expenditures.

"Third, another economic factor which has considerable influence in the sequence of our work is the availability of farm labor and teams between the months of June and September. During this summer period there is always an abundance of good labor and good teams.

"The above causes will be reflected in the total maintenance expenditures of any year. However, the largest single factor which may enter into labor fluctuations in a particular division is the amount of betterment work which may be ordered by the Commission in that division. For example, projects authorized in the winter are nearly always executed during the following spring and summer. On the other hand,

projects authorized during the late spring and summer must be expedited so that they can be completed before the following winter.

"During the past fiscal year because of the desire of the Commission to cooperate in the relief of unemployment, projects for betterment on the calendar that ordinarily might have been delayed were speeded up. This same policy has been followed by other State Highway Departments because it has served a double purpose of not only giving relief to unemployment, but obtaining the maximum value for the funds spent.

"You have called particular attention to, and requested me to explain the large increase in number of men employed in Division No. 9. If you will recall the above factors which I mentioned as the cause for labor fluctuations, the tabulation of employees for Division No. 9 will serve as a good illustration of how such factors may combine to cause sharp and marked variations.

"First, starting with May, you will see the seasonal increase for normal maintenance work. This extends through the month of July. During the period from May and through July there was very little betterment work in progress in this district. However, beginning in the latter part of July and the first part of August several betterment projects for which special appropriations had been made, were started. The appropriations for these projects exceeded \$100,000.00. Part of this work was authorized during the early part of the summer, but due to preliminary investigations and the securing of rights-of-way and materials, they could not be started before late summer. Appropriations for three of these jobs were made respectively during the months of June, July and August.

"This large increase over the normal work would at any season have necessitated an appreciable increase in the number of workers employed. However, these projects starting in July and consisting chiefly of earthwork and bridges, compelled the engineer to build up his forces to a number that would assure the completion of these betterment jobs before the unsettled weather of the late fall months.

"At this point, I believe I should

call your attention to the fact that the number of men employed as shown in your tabulation does not reflect the actual number of men on the work at any one time. Although correct insofar as names listed, a large number of these men worked only one-half of the time and then gave way to a new crew. This practice was followed in order to provide as much relief as possible to local employment. This practice is in line with that now being used by the Federal Bureau of Public Roads, and other State Highway Departments.

"Also, if you will add the months of September, October and November to your tabulations you will see that the number of employees was in direct relation to the special betterment jobs in progress in that division during those months. There was practically no decline during September, but in October when three of these special projects were completed, there was an approximate reduction of 300 laborers. As other projects have been finished during the past two months, the number of employees has in like manner been reduced. By January the total number of employees should correspond to the normal January figures unless the Department should adopt a general policy of half time work. Some states have adopted this plan in order to distribute public work among as many people as possible.

"Mr. McNally especially called my attention to the comparison between the number of workers in Division No. 9 in 1930-31 and 1931-32. If you will note the appropriations of maintenance funds for these two years in that district you will see that during the last fiscal year there was approximately \$120,000.00 more than during the previous year. Practically all of this increase was for betterment work and authorized after the Commission had discontinued the requirement that counties participate in the cost of building State highways.

"Trusting that I have herewith supplied the information requested by you, I am — — —."

Q. Thank you, Mr. Carter. Now, right straight through that explanation that the gentleman made on page 33 and 34, he refers to projects. Well, now, maintenance in Texas is not a project?

A. There are certain classes of maintenance, Senator, which are carried as projects. They are what they call betterment jobs that have the nature of improvement, and in some cases are practically the same thing as construction.

Q. I happen to know about part of District 9, and I know in McLennan County and also in Bell County, that extensive outlay of work up there was practically all contract work because they laid out a program and it was accepted by the State Highway Department and the increase in Division 9, that we are talking about is what you find in maintenance, not on the contract.

A. They are maintenance employees. In other words, it is work done on labor and material basis, and not on contract basis.

Senator Sanderford: I secured this information from the Auditor's office, with reference to Division 9, the amount of money spent, the number of employees; for May, 1932, there were six hundred and thirty-eight employees in Division 9 on maintenance work. The amount expended was Twenty-five Thousand, Four Hundred Nine Dollars and forty-nine cents. In June there were seven hundred and fifty employees, amount expended was thirty thousand dollars plus. In July the number of employees was nine hundred and sixty-seven and the expense was forty thousand dollars plus. In August, the run-off month, the second primary, their maintenance force was increased to two thousand and eighteen men in Division 9 and they expended eighty-one thousand dollars plus. In September the maintenance force dropped down to seventeen hundred and ninety-five, and the expenses necessarily dropped to fifty-nine thousand dollars plus. Then in October the maintenance force dropped down to seventeen hundred and ninety-five, and the expenditures dropped back to fifty-one thousand dollars plus. I did not check through the recent month, but I want to offer that in evidence here but I will say that came out on the fifteenth of this month.

Senator Stone: Who gave this information?

Senator Sanderford: The State Comptroller's Department, they issued the warrant. That is where the information came from.

(The statement above referred to and introduced is as follows:)

Division 9

	1932	
Month	Employees	Amt. Mny.
May	638	25,409.49
June	750	30,626.98
July	967	40,326.66
August	2018	81,894.71
September	1795	59,863.68
October	1203	51,760.47

Q. Now, these losses that we have referred to here, the thirty thousand, the excessive expenditure,—here might be the reason that this letter was sent out the 15th of this month. I would like for the Secretary to read this letter and run it into the record. Maybe the witness wouldn't mind reading it?

A. I will read it, but want it understood this is not a part of my testimony.

Senator Woodward: Wait a minute.

Senator Sanderford: It's just a statement, Senator, that they are out of money, and I think that it is material upon the point we are showing that excessive losses have occurred, as a reason they are out of money.

(The letter was thereupon read and is as follows:)

February 15, 1933.

To all Division and District Resident Engineers

To all Department Heads  
Gentlemen:

The Department has reached a point where work is beginning to close down and many employees will be thrown out of work. The Division Engineers and others in charge of employment of men should carefully consider seniority with the Department in reorganizing their forces. Of course, efficiency and honesty come first but it is due satisfactory employees of long service that they be given preference over other employees of equal ability with shorter service.

The Division Engineers should not let grow up in their division a feeling that they must have a certain man possibly from some reason of friendship or association in the past, but the Department's interests should be conserved and protected and to do this the above policy is to be adhered to.

This refers not only to engineers but to all employees of any class.

Yours very truly,

(Signed) GIBB GILCHRIST.

Q. Mr. Carter, in your examination of the records of the Highway Department did you find in any place, either in the Executive Department, Engineering Department or Division Engineers any record where they required the employees during August and July to contribute funds to anybody for campaign purposes?

A. We didn't make any investigation of that kind; in fact, our audit of the Highway Department was complete at that time, with the exception of following up a few special investigations, and we made no investigation of that feature of it.

Senator Sanderford: That's all.

Questions by Senator Woodward.

Q. Mr. Carter, this matter you referred to a while ago about the road down here,—what road is it?

A. You are referring to the road in Trinity County, Senator?

Q. Yes, sir. Well, referring back to that particular project, that was a contract job, wasn't it?

A. Yes, sir.

Q. How did you estimate the gravel that went on the road?

A. I have an analysis in here of that, Senator.

Q: Without referring to that to make the testimony short, how did you estimate it?

A. We took first the records in the Highway Department file; they have a system of reports from their inspectors and the various shipping points of the number of cars inspected and shipped.

Q. What kinds of cars?

A. Car loads of gravel which are shipped into the project.

Q. You mean railroad cars?

A. Railroad cars, yes, sir. We first listed the number of cars shown on these inspection reports.

Q. Now, that is as to this particular road?

A. Yes, sir, in fact, this is the only road we made that class of test on. We then cross-checked that against the record of cars unloading—cross-checked on the car numbers. We went then to the office of the gravel company, who had furnished

the gravel, I don't remember the name, but I have it in my report here, the Texas Construction Material Company, Houston, Texas. We went to their office and from their ledgers and car record books we checked our list against their record of gravel which they had shipped to the contractors, and at the same time listed the weights of the gravel which they had shipped—their railroad weights. We then went to Lufkin, the Division office, and there we secured the Division Engineer's records, which included copies of the freight bills from the railroads on those cars and made a further check. By that method we established the amount of gravel shipped into that project. Then we calculated the average per cubic yard and in that way reached the tonnage basis of the gravel paid for. The gravel was paid for on a yardage basis. We made tests on several classes of gravel, got various weights. We wanted to get a test of the particular kind of gravel used on this job from the same pit. I conferred with Mr. Gilchrist who referred us to Mr. Harvey Dean. Mr. Dean assisted us in getting the gravel company who made the shipment to make for us a batch of gravel meeting the same specifications out of the same pit. The Division Engineer at Yoakum loaned us ten trucks. Then we weighed five measured yards and ten truck loads, and then calculated the capacity of the truck and got the average weight per cubic yard on the ten loads. That then gave us a basis of the average weight of that particular gravel per yard and we made that calculation on that basis to establish the yardage.

Q. And the result of your calculations was that the road was short how much?

A. I have the figures in here. Our calculation showed, as near as we could get it, 8167.09 yards; the average price paid for that, including haul was three dollars eighty cents per yard, consequently the calculation showed approximately thirty thousand dollars shortage.

Q. That was a contract job?

A. Yes, sir.

Q. Then if it was a contract job, and if your figures are correct, or approximately correct, the contractors short-potted the State that much?

A. That's true; the contractor was paid for this at so much per yard.

Q. That matter was referred by you to the Highway Department?

A. Yes, sir.

Q. And the Highway Department referred it to the Attorney General's office for whatever action might be necessary against the contractor?

A. That's my information.

Q. And that matter is still pending?

A. As far as I know.

Q. About how many miles of road had the Highway Department contracted or was being constructed during the year in which that investigation was made?

A. I have those figures quoted in the report. I can probably quote them for you. Do you want to confine that to gravel roads only, or all class of roads?

Q. Well, give me all classes of roads first.

A. All classes. This project involved surfacing only and so I can eliminate any work in the way of grading and arranging road beds and give you the surfacing mileage.

Q. All right, give me the surfacing mileage.

A. The total surfacing mileage during the two-year period we investigated,—we compiled these figures for a two year period based on completed projects,—didn't attempt to split between each year for the two-year period,—was 2134.16 miles of completed construction of all classes.

Q. And how many miles were involved in this project?

A. This project involved a fraction more than twenty-two miles,—22.189 miles.

Senator Martin: Where can you find that listed?

The Witness: On page 42, Senator, the information is summarized just below.

Q. What condition was this gravel in when the test was made,—wet or dry?

A. It was wet, yes.

Q. It was wet?

A. Yes, sir.

Q. You understand the Highway Department doesn't pay for the gravel on the railroad weights?

A. Pay for it by the yard.

Q. And make allowances for the condition of the gravel?

A. I don't know what allowances they make.

Q. Now, these figures that have been read into the record showing the number of men on the payroll as reflected by the Comptroller's report, that Senator Sanderford read into the record relates to the same matters contained in Mr. Early's letter?

A. I haven't any information about the letter he read; I understand it does.

Senator Woodward: It does, doesn't it?

Senator Sanderford: Same period of time.

Q. Same period of time?

Senator Sanderford: Yes, sir.

Q. The contractor in this project we have just been inquiring about was under bond, wasn't he?

A. Yes, sir.

Q. Did you examine his bond?

A. I saw the bond in the file. I believe I read it, but didn't pay particular attention to examine the terms of it. It was a standard bond.

Q. Do you know who the sureties are?

A. I think possibly I have that mentioned in here, Senator. I will see if I have. I understand that it was the American General Insurance Company, but that is an item that I didn't put into my report and so I can't be sure that's it, but from other information I have in the same report I am under the impression it is.

Q. It was a surety bond,—not a personal bond?

A. Yes, sir.

Questions by Senator Woodruff.

Q. Mr. Carter, which weighs the most, a cubic yard of wet sand or a cubic yard of dry sand?

A. That matter wasn't involved in our computation.

Q. You heard my question?

A. Yes, sir.

Q. Well, do you know?

A. I made no investigation to determine that.

Q. Do you know which weighs the most?

A. I do not.

Q. Do you know which weighs the most, a cubic yard of wet gravel or a cubic yard of dry gravel?

A. I do not.

Q. Do you know which weighs

the most, a cubic yard of wet gravel or a cubic yard of dry gravel?

A. I don't know.

Q. You say the gravel you hauled was wet?

A. Yes, sir.

Q. Did it have water poured on it or was it just normal moisture as it came from the pit?

A. It happened to be a wet day, and the weather was wet, and consequently the gravel was wet.

Q. Do you have any information as to how much variation in weight there would be in a carload of wet gravel and a carload of dry gravel?

A. I have not.

Q. Did you have occasion to investigate S. P. Car No. 44661, freight bill No. 75?

A. I can't answer that. I have no record before me to show what cars. I could get the information from my files, but I haven't got it here.

Q. You don't know that that is one of the cars that you investigated, and that its weight, railroad weight, was eighty thousand pounds, and contained forty-one cubic yards, and according to the railroad weight, the weight per cubic yard was 1953 pounds? You didn't find that information as you now recall?

A. I can't tell you whether I investigated that car or not, because I have no records before me to show that.

Q. Can you tell the Committee whether you investigated S. P. car No. 44923, freight bill No. 183, railroad weight 82,060 pounds, forty cubic yards in the car and found the average weight of that gravel was 2051 pounds?

A. If you want me to get my file I can tell you which one of those cars we checked. I cannot tell you from memory.

Senator Martin: I suggest the witness be permitted to get his files.

The Chair: I think so. He couldn't be expected to testify to that, gentlemen.

A. I can send for my file if you care to, Senator.

Q. I would like for you to send for this information. I want S. P. car No. 44661—

A. (Interrupting) All of the cars will be in the same file. I am sending for the entire file.

Q. Now, you testified a while ago something about a thirty thousand dollar shortage.

A. As near as we could calculate it.

Q. Do you testify here now to the Committee there is an actual shortage of approximately thirty thousand dollars?

A. Senator, I — —

Q. Answer yes or no.

Senator Hornsby: I insist the witness be treated with some degree of courtesy.

Senator Woodruff: I am asking him to answer yes or no, and not evade the question. If you will sit down—

Senator Hornsby: I am going to make my objections to the Chair. I have a right to do it. I think this witness is entitled to at least reasonable courtesy from alleged counsel, and I think he ought to be more considerate. The witness is not trying to hold back anything. He is a very willing witness and has a right to explain it.

Senator Woodruff: Mr. Chairman, I make the objection that the witness has continually throughout this hearing been evasive and has generalized his answers. I am insisting that for one time he be specific. That is all I want to know. What his specific findings were.

The Chair: I think I know counsel well enough to know that he knows how to ask these questions and I think the witness has answered them directly as possible. If you cannot give a yes or no answer, you can state that and then you can make such qualification as you care to make, but on those questions that can be answered yes or no don't go into an explanation until you have stated you cannot give a yes or no answer. Let's treat everybody courteously and try to get along as much as possible.

Senator Hornsby: In contrast to the statement of the Senator from Wise I want to state I have listened to this witness ever since he has been on the stand, and he is one of the fairest of witnesses and one of the most willing witnesses—

The Chair: (Interrupting) That is a matter of opinion.

Senator Hornsby: He has stated that the witness has been evasive and I make the statement he has not been attempting to evade a single question from any source. He has been as impartial and as fair as any witness I ever saw in my life.

The Chair: The record is there to speak for itself.

Q. Did you answer you could not say whether there was a shortage of thirty thousand dollars?

A. It is a matter that is in controversy, Senator. I can't say yes or no.

Q. That is all I wanted to know. Have you a competent engineer on your auditor's staff?

A. No, sir, we do not have.

Q. Are you able to tell the Committee the difference between maintenance work and betterment work on highways?

A. No, sir, except as we have been advised in certain specific projects by the Highway Department employees.

Q. In listing these employees that were engaged in the summer of 1932 in maintenance work, did you distinguish between those engaged in maintenance work and those engaged in betterments?

A. No, sir. We listed the total employees reported to us by the Division Engineer.

Q. Did you distinguish in your report as to number of employees employed in those months of July, August and September, 1932, those that were employed on a part time basis, and those that were employed on full time?

A. Senator, you mentioned a couple of months that I do not think I included in my calculations.

Q. July, August and September.

A. I don't think we made any calculation on September. We calculated on July and August.

Q. Why did you specifically investigate July and August and not September?

A. In order to get a comparison at the close of the fiscal year.

Q. Why did you pick out July and August?

A. Particularly I made that investigation at Mr. Lynn's personal instruction.

Q. Do you know why Mr. Lynn specifically designated July and August?

A. I think Mr. Lynn can answer that question for himself.

Q. Do you know why he designated those two counties?

A. Counties?

Q. Yes, those two months.

A. I think he can answer that better than I can.

Q. Answer yes or no.

A. No.

Q. If you don't know, say no.

A. No.

Q. All right. Did you hear him say why he picked out July and August, 1932, as example months?

A. Senator, he and I talked about so many things I can't testify to everything I heard.

Q. Say yes or no. You either know, or you don't know.

A. I don't remember, sir.

Q. All right. Did you make any inquiry in connection with those two months, July and August, 1932, to find out whether or not men were being substituted for machinery whenever it was possible to do so?

A. We relied entirely on Mr. Early's explanation, sir. We didn't have time and didn't have the men to go in and make a detailed investigation. That is the reason we asked Mr. Early for his explanation.

Q. Do you know whether or not man power was being substituted for machine power in maintenance work in the summer?

A. I don't know, sir.

Q. Do you know whether or not during the summer of 1932, generally, and particularly in the months of July and August, 1932, the cities were employing men to take care of the unemployment situation as an emergency proposition?

A. I have nothing on that except what I read in the newspapers.

Q. What is your general information on that question?

A. I don't know, sir. It is not a matter that came within my investigation.

Q. Are you familiar with Senate Concurrent Resolution No. 10 introduced at the regular session of the Forty-second Legislature in 1931?

A. No, sir.

Senator Woodruff: Mr. Chairman, at this part of the proceedings I desire to have read into the record Senate Concurrent Resolution No. 10. I think it might as well come here as later.

(At this point, the Secretary of the Senate read the resolution, but the question of whether or not it would be included in the record was held up by the Chair until it could be determined whether or not it had been finally passed.)

Q. With reference to the part-time employment, does your report reflect whether or not the number of employees on the payroll for the months of July and August were full time, or part time?

A. Senator, it wasn't possible for us to make a detailed investigation of that, but I did work out the average number of hours for each employee in each case.

Q. Does your record show whether there were two men working alternately by weeks on the same job?

A. The only record I have is the average number of total employees. I could give you that information if it is desirable.

Senator Woodruff: In order to save encumbering the record, here are the General and Special Laws of the State for the Forty-second Called Session of the Legislature, with the resolution as it was signed and approved by the Governor, and I would like to have it read:

The Secretary: "Requesting Employment of Texas contractors and manual labor in highway construction. Senate Concurrent Resolution No. 10. Whereas, The financial condition of the people of this State is such that they are in need of every possible opportunity to secure employment and it is a humane and just policy of government for the State and local government to expend the tax money of our people in the manner best calculated to aid the citizens of Texas, to earn a livelihood by the performance of the necessary work incident to public improvements; and,

"Whereas, It is a sound and proper policy of government to give preference in all public works to local contractors and to local labor and to methods of construction calculated to provide the greatest possible economical employment of farm and unskilled labor.

"Now, Therefore, Be It Resolved, By the Senate of Texas, the House of Representatives concurring, That it is hereby declared to be the policy of this State in all road and highway construction and maintenance as well as in all other public work to do such work in such manner as to provide the greatest possible opportunity of employment to Texas citizens and that in furtherance of

this end the State Highway Commission and all county judges and county commissioners are hereby requested to carry out this policy in all of their construction and maintenance contracts and works, and that they give preference in the letting of all contracts to Texas contractors, and that all contractors and governing bodies performing such work are called upon to use all of the manual labor and team work that can be economically so performed, and all such officials are hereby requested to observe this policy.

"It is not intended hereby to reverse the policy of this State to procure the greatest possible highway mileage construction for the money appropriated for the purpose." Approved by the Governor September 30, 1931.

Q. Did you examine the gravel that was put on that job?

A. The gravel was laid long before I got to the job. I had no opportunity to examine it.

Q. Did you have any information as to the average sand or clay content in that gravel?

A. The test reports will show that. I don't know anything about it personally.

Q. Your report don't show that.

A. No, sir.

Q. You are not an engineer?

A. No, sir.

Q. You, therefore cannot say whether or not the high clay content would vary the weight of the gravel.

A. No, sir, I couldn't say personally on that.

Q. And your computation of the yardage was on the weight basis?

A. Yes, sir.

Senator Purl: A point of inquiry, Mr. Chairman. Do I understand that this original resolution that we are now inquiring into authorizes that we shall investigate this Security Bank matter in substance and no other charges, or any other matters?

The Chair: Any other charges.

Senator Purl: If it says "charges" I want to raise a point of order. There have been no charges made as to any shortage in the quality, quantity or prices concerning the laying of roads. Now, then, if the resolution says we can go into any other matter, and if it is pertinent

for a Senator to go into any other matter he wants to, and if the Chair holds that we go into the Security Bank charges as have been laid down by the Governor, or any other charges, I am going to raise a point of order, that all of this testimony should be stricken from the record because it is not a charge made by anyone, especially the Governor.

The Chair: Repeat that, Senator.

Senator Purl: I have had handed to me, and I give it to the Chair for what it is worth, that after the Governor had sent up the message concerning the affairs of the Security Trust Company Senator Woodward and Senator Stone sent up an amendment that read as follows: "I move that in connection with the message just received from the Governor that before any action is taken on the message that the Governor, Mrs. Miriam A. Ferguson, be requested in writing to the Senate the source of information with reference to the matters and things charged in the message, including the list of the counties involved, and the Senate resolve itself into a Committee of the Whole for a hearing of the charges and a determination of the facts with reference thereto, Thursday morning at ten thirty o'clock, at which time the Senate may investigate also any and all other charges which may have been made or which may arise in connection with the financial affairs of the State Highway Department." Before I raise the point of order in the light of this statement I have just read, I ask as a point of inquiry whether this matter has been made as a charge?

The Chair: I don't think it has been made as a charge, and I will state for the benefit of the Committee that I have not raised any objection myself because I did not think I should do it, —

Senator Purl (Interrupting) I will raise the point of order that it is not within the scope of this investigation. There has nothing been charged as to the quality or quantity or dereliction of duty as to the construction of roads, and all evidence heretofore taken on that matter be stricken from the record.

The Chair: I will state that it would be in order at any time for any Senator to make a charge, that is or prefer a charge himself, and then

introduce testimony in connection with that charge; but at the present time the only charge that has been made of anything wrong is with reference to the bank matter here in Austin and the testimony probably should be restricted to that. I am going along on the assumption that if any member of the Senate wanted to go into a full investigation, and quiet all rumors of the whole transaction and get this thing once and for all behind us here in the Senate, but if anyone should insist that there are no charges filed on that I think I should sustain the objection to the testimony that is being introduced, but I take it that a Senator could turn right around and make a charge and then it would be in order to hear the testimony. I have stated my views along that line but if the Senator presses his point of order of course I would sustain the objection.

Senator Martin: Mr. President, I think in order that there may not be any question about it and that the record will show charges being made I offer in evidence at this time the entire Volume Ten of the Second Bi-annual Report of the State Auditor for 1932. That gets it in the record.

Senator Purl: Will you stand behind everything in it?

Senator Martin: Those matters set out therein.

The Chair: That is a charge made by a State official in the same sense that the Governor has made a charge?

Senator Martin: Yes.

The Chair: I overrule the point of order. Let's get along now as fast as we can.

Senator Purl: I want to get along and get through just as quick as we can. I just want to get it straightened out. As I understand that matter any Senator that hears a rumor on any matter whatsoever about the Highway Department, he can inquire into it by stating in advance he has heard that and wants to prove it up.

The Chair: I think he should file his charge and get it before the Senate so we can get what he is driving at.

Senator Purl: Do we understand that the Highway Department is charged with everything contained in volume ten and that they are

credited with everything contained in it?

The Chair: Well I think you would take on one with the other.

Senator Purl: In other words, the tail goes with the hide?

The Chair: I think it amounts to a charge by the State Auditor.

Senator Purl: That is why I wanted to raise the point of order. If Senator Martin relies on it, and if it is his charge it is his privilege and I have no complaint, but I don't want Senator Martin to turn in that book as being a charge of the State Auditor unless the State Auditor will sign and swear to that as true. If Senator Martin will turn it in I will accept that as his charge.

The Chair: Well, the resolution is rather loosely drawn.

Senator Purl: I want to make it clear that I don't think we ought to be investigating the Governor's charge and the State Auditor's charge. The Governor has signed her name to a special message; now if the State Auditor will sign his name to that as a special message, and point out that book as his charge, or if Senator Martin will sign this as his charge and that Mr. Lynn has nothing to do with it except in so far as he compiled it, that is all right.

The Chair: I think Senator Martin has done that and Mr. Lynn is not in it.

Senator Purl: Do you consider that as Senator Martin's charge or a charge by the State Auditor?

The Chair: I consider it a charge on the part of both of them.

Senator Purl: I would like to cross-examine both of them.

Q. (By Senator Woodruff) About when was the first time you made any inquiry into the Trinity County job?

A. It was sometime in the early part of,—I believe the first notice I took of it was in 1930, but the investigation of this particular project did not begin until the early part of 1932.

Q. At the time you first started investigating this project were you engaged in a general audit of the Highway Department?

A. Yes, sir.

Q. Were you in almost daily contact with the various employees of the Highway Department?

A. Yes, sir.

Q. You knew where Mr. Early's office was?

A. Yes, sir.

Q. You knew where Mr. Gilchrist's office was?

A. Yes, sir.

Q. Did you go immediately when you heard these rumors to them and ask them for any information they had about it?

A. I took the matter first up with Early's assistant, Mr. Zay Johnson, and he didn't know anything much about it. And then I took it up with Mr. George G. Edwards, the construction engineer, and he didn't have very much information to give me, and we made no further steps, and the matter was delayed for investigation until I could get to it later in the audit. I did not go to Mr. Gilchrist with it until we had made sufficient investigation to have some information before us.

Q. At the time you took the matter up with these two gentlemen you have just named, had you theretofore taken it up with anybody else or taken any steps to investigate the matter?

A. No. The first person I talked to about it was Mr. Johnson, because I think it was a maintenance project, or rather I thought it was a maintenance project and he advised me that it was not a maintenance project, so I went to Mr. Edwards and it was several months before I really got into an investigation of it. You understand in an audit of this kind we have to get to them as we can.

Q. Do you know whether or not the State Highway Department had it under investigation at the time it was called to your attention?

A. Some information in the files indicated they were investigating it.

Q. Then your investigation was supplemental to that of the department's investigation of the same stuff, is that true?

A. I would judge it was, yes.

Q. And the department employees cooperated with you in every way possible in getting all the facts in reference to that examination?

A. They gave me all the information. All of the records were placed at my disposal. I got as much cooperation as I could expect.

Senator Woodruff: I believe that is all.

Senator Martin: May I ask an-

other question or two, Mr. Chairman?

The Chair: Yes, go ahead.

Q. (By Senator Martin) You were asked the question why you picked out July and August, 1932, to make comparisons with reference to men employed. As a matter of fact you found the payrolls for those two months so much higher than the previous months that you decided it merited investigation.

A. We picked out four months.

Q. Well, four months then.

A. We took these four months because they were four months in the middle of the year. I took those four months at Mr. Lynn's instructions, but as far as I understand it was just a period. We were not able to investigate a full year and we took four months in the summer.

Q. And it was in those four months that you found the cost of maintenance had gone so much higher than before?

A. We did not investigate the cost.

Senator Woodruff: We would like to object to the leading of the witness. He is putting the testimony in his mouth.

Senator Martin: He is not my witness.

Senator Woodruff: You put him on.

The Chair: Well, we do not adhere strictly to the rules with reference to leading the witness.

Q. With reference to the increase of employment in McLennan county, the Senator has asked you whether or not there were any betterment projects going on up there. Did they when you called upon them ever explain, set out and state to you, "We have undertaken certain projects of betterment, where it is necessary to employ additional hands," and give you the name of the project?

A. I think that is included in Mr. Early's letter.

Q. The only letter he gave you that was read into the record?

A. Yes, sir.

Q. And in that letter he did not name any particular project that was under construction at that time?

A. No, sir. We did not ask for specific details.

Q. Now, with reference to increase of employees, that is man labor on these roads during the

months that your audit investigated here, the four months,—go back again to the resolution adopted in 1931 here in the Senate, do you know of any reason why it took until during the course of a hot campaign, and just before a primary election to get that resolution in force?

A. That is a question, I can't answer.

Senator Martin: That is all.

Questions by Senator Sanderford.

Q. That resolution was in September, 1931, wasn't it, I believe?

A. That's the first I heard of it.

Q. Authorizing the increase of this labor to help out this unemployment. A pretty broad resolution and it was about nine months before they decided it ought to be done,—that the resolution should be really put into effect, and it happened right at the time of the two months of the primary,—that's the point I want to bring out.

A. I can't tell you what they did the month prior to the period we investigated. We got only the months of May to August.

Q. With reference to the half time employment, employing a man a half a day and another a half a day in order to help out the situation in Division 9, for instance, the employment increase was two thousand, I believe?

A. Our records showed a little less than that, Senator.

Q. I mean two thousand men,—something over two thousand men?

A. The information that was given to us by the division offices of the Highway Department showed 1235 employees in August, 1932.

Q. Well, the pay according to the records down in the Comptroller's office, I believe, was two thousand?

A. That's a matter I haven't any information on.

Q. Here is the point. As the employment went up in numbers, the cost of employment went up in proportion for full time. Now, if they were working half time then, they were either paying half time men full time wages or else had half as many men as are shown there?

A. I didn't make a calculation of the amount paid, but did make a calculation of the number of hours.

Q. You didn't compile a record of the number of half time men?

A. We didn't have time to go into that. There were twelve thousand men on the payroll and didn't have time to develop that.

Q. In view of the fact that the cost of labor went up in proportion to the number of men employed up there wouldn't it naturally follow that they were paying half time men full time wages or else had half as many men?

A. That's a question of mathematics.

Q. That's a mathematical fact?

A. Yes.

Senator Martin: Offering this a moment ago (referring to Vol. 10) I would like for it to be considered along with the record, but not copied into the record.

Senator Purl: We don't want it copied. I have no objection to it not being copied, but would like to ask Senator Martin to read it before he offers it.

Senator Martin: Have you read it?

Senator Purl: Yes, sir.

Senator Martin: All of it?

Senator Purl: Not quite all.

Questions by Senator Stone.

Q. Mr. Carter, turn to page 71 of Vol. 10?

A. All right, Senator.

Q. What is that schedule in there of \$322,000.00?

A. The total is shown on page 72?

Q. Yes, sir.

A. That was the amount that we found still out on deposit with depository banks to cover the county's portion of escrow moneys which were on projects which had been finally completed on the books of the Highway Department, but the money was still in the bank on escrow.

Q. How long had those deposits been retained, do your records show?

A. They run various times; some of them had been in there quite a long time.

Q. What do you mean by quite a long time?

A. I believe, we state in here some of them had been in—just a minute, let me find it. I would like to read you this extract from page 71, which I think will answer that question. (Reading) "These deposits which in certain cases represented residue balances on pro-

jects 'finalled' one and two years prior to January 31st, 1932." Now, I can't say how long each particular deposit had been in without going back through the record.

Q. Some had been due at least two years at the time of this report?

A. The project had been finalled approximately two years.

Q. And the money still retained by the Highway Department?

A. It was on deposit in escrow accounts in the bank.

Q. Where were those escrow accounts?

A. They were in various banks. I would have to check back this list to see which bank. I could get that information, but it was scattered in various county depository banks.

Q. Do you know why they were retained that long?

A. I can't say exactly why, sir, no, sir. I could give an opinion as to why if that would be of any value to you.

Q. Let's have the opinion?

A. Well, probably just in the course of bookkeeping it was neglected or overlooked.

Q. Now, in all these amounts here, this one hundred nineteen thousand dollar item in there on this same schedule?

A. Those figures are made up of two different classes of depository accounts. The one column of \$322,000.00 is the amount of the original deposit in the escrow accounts and the others are items which are made up of interest credited by the bank on those deposits and things of that kind.

Q. Then on this date, January 31st, 1932, the Highway Department had \$442,409.70 of money on hand that should have been returned to the counties.

A. That was in the depository bank and should have been released.

Q. In escrow accounts?

A. Yes, sir.

Q. That should have been released?

A. Yes, sir.

Q. Some had been there for a period of two years?

A. Yes, sir.

Q. Do you know if any of this amount is involved in the present escrow account of the Security Trust Company?

A. Not without going back and checking through the papers.

Q. Will you get that information for me?

A. I can get it.

Q. Can you get it for me tomorrow or next day?

A. Yes, I will have it for you tomorrow; I can tell you each bank it was deposited in.

Q. Turn over to page 74. What is that statement in there, Mr. Carter?

A. That's under the head of insufficient amounts placed in escrow?

Q. Yes, sir.

A. That's what you refer to?

Q. Yes, sir.

A. That represents amounts due by the counties for construction work on which the deposit in the depository bank in escrow was not sufficient to have paid the amount which the county owed the Highway Department.

Q. What's the total of that amount?

A. The total amount due the Highway Department by the counties was \$598,500.00; the total balances in escrow were \$201,472.73.

Q. Then \$201,472.73 is part of the same item set up further on in your amount shown in escrow, isn't it?

A. What's that, Senator?

Q. That \$201,472.73 is part of that same item and is carried forward later on in the report in the total amount in escrow?

A. Yes, sir a part of the total amount shown in escrow.

Q. Does that mean that \$201,000.00 should be subtracted from the five hundred and ninety-eight?

A. It could be applied against five hundred ninety-eight as part payment of that, yes, sir.

Q. Now, this figure over here on page 75, \$201,000.00, that's the net after deducting the balance that was in escrow?

A. No, sir, that is the total amount which is in escrow, or was in escrow on those particular projects.

Q. Well, what I am trying to find out is the five hundred ninety-eight thousand five hundred dollars—

A. (Interrupting) Yes, sir.

Q. If they had anything on deposit in escrow to secure that?

A. They had \$201,472.73 on deposit to secure that.

Q. Well, subtract that and show how much was due by the county at that time?

A. I am ready with those figures.

Q. What is the figure?

A. There was a difference of \$394,027.27.

Q. Now, what does that represent, Mr. Carter?

A. That represents the difference between what the counties owed the Highway Department, and the amount which was on deposit to pay for those projects.

Q. Now, when was that work completed?

A. The Highway Department did the work, billed the counties and charged them on the books with their share of the cost.

Q. Is this a list of the counties down there, the ones shown on pages 74 and 75,—is that a correct statement of the counties?

A. Yes, sir, that's a statement of the counties and project numbers involved in this particular account.

Senator Stone: In this connection I want to offer these two schedules shown on pages 71 and 72, and 74 and 75 of Vol. 10.

(The schedules offered are as follows):

AMOUNTS STILL ON DEPOSIT ALTHOUGH PROJECTS HAVE BEEN "FINALED."

Among the deposits as at Jan. 31, 1932, there was observed \$442,409.74 of unreleased or unwithdrawn deposits on "finaled" projects on which counties had fully reimbursed the State Highway Department for their portion of the cost. This amount includes \$117,543.24 of Childress County funds which, it appears, were impounded in whole or in part by the District Court in legal action relative to the location of Highway 4.

These deposits which in certain cases represented residue balances on projects "finaled" one and two years prior to Jan. 31, 1932, should be transferred out of escrow accounts and returned to the counties' general, or other funds, provided these balances have not already been withdrawn by them or will not be needed on future projects.

The auditor's preliminary report indicated that approximately \$115,000 had been released or withdrawn by June 30, 1932. Additional information obtained discloses that the total amount released or withdrawn at June 30, 1932, aggregates \$289,854.38. It is understood that since that date, several other deposits have been released to the counties.

Following is a list of deposits referred to in the preceding paragraphs. The amount shown with an asterisk represents deposits released or withdrawn up to June 20, 1932, as far as could be determined.

County	Project. No.	Balance in escrow Jan. 31, 1932	Interest, Additional Deposits and Unwithdrawn Amounts Released
Austin	S.A.P. 646 A II	\$ 14.28	
Austin	S.A.P. 646 C	11,437.91	
Brown	S.A.P. 896 A		1.56
Caldwell	F.A.P. 522 A		50,555.39
Carson	S.A.P. 713 II	455.85	
Cass	F.A.P. 457 A III		81.95
Cass	F.A.P. 457 B III		39.26
Cass	F.A.P. 457 C III		39.26
Childress	F.A.P. 438 III	112,914.21*	
Childress	S.A.P. 854 A	2,414.18	
Childress	F.A.P. 533 A	2,211.02	
Childress	S.A.P. 771 A		3.83
Dallas	S.A.P. 746 H		.01
Dimmit	S.A.P. 718 A	2,540.50	

County	Project. No.	Balance in escrow Jan. 31, 1932	Interest, Ad- ditional De- posits and Unwithdrawn Amounts Released
Dimmit	S.A.P. 718, 718 B I and II, 718 A II and C II		17,288.31
Fayette	F.A.P. 488 A II	4,027.40	1,631.44
Fayette	S.A.P. 842 D	823.13	
Grayson	F.A.P. 522 A II	3,802.76	
Grayson	S.A.P. 935 A	108.11	.01
Grayson	F.A.P. 292 A II Reop.	587.97	
Grayson	F.A.P. 549 C II	7,521.24*	
Grayson	F.A.P. 539 F II	893.94*	
Hall	F.A.P. 602 A		33.39
Hall	F.A.P. 602 B	765.90	96.25
Hall	S.A.P. 478 A	757.42	247.38
Hardeman	S.A.P. 843 A II	530.71	
Harris	F.A.P. 514 B	3,407.70*	
Haskell	F.A.P. 603 A II	25,882.11*	
Hemphill	F.A.P. 45 C Reop.	96.69	1.45
Hemphill	F.A.P. 625 C	193.73	.83
Hopkins	S.A.P. 501 B		288.68
Jones	F.A.P. 581C	801.77	
Jones	S.A.P. 606 III	350.74	116.87
Jones	S.A.P. 855 A II	1,663.90*	
Jones	S.A.P. 967 B	73.08	
Jones	F.A.P. 581 B	4,151.64	
Karnes	F.A.P. 434 C	3,950.90	
Karnes	S.A.P. 788 C	2,106.46	
Knox	S.A.P. 696 B	2,501.87	
Lavaca	S.A.P. 842 A II	1,366.87	
Lavaca	S.A.P. 842 B II	1,923.86	
Lubbock	F.A.P. 502 A II	6,988.38	1,442.33
Lubbock	F.A.P. 613 D I and II and SAP 954 E II	4,629.27	580.81
Lubbock	S.A.P. 981 A	790.06	83.70
Lubbock	S.A.P. 716	1,103.27	
Lubbock	F.A.P. 546 A I and II	14,521.80	23,807.48
Navarro	S.A.P. 939 A		3,276.50
Navarro	F.A.P. 562		960.63
Navarro	F.A.P. 562 II		732.82
Navarro	F.A.P. 569 A II		4,533.01
Navarro	F.A.P. 569 D		95.90
Navarro	S.A.P. 902 A		3,560.55
Navarro	S.A.P. 902 A I		8,751.21
Navarro	S.A.P. 902 B		1,053.90
Polk	S.A.P. 752	206.48	41.54
Polk	Hy. 45		1.74
Randall	F.A.P. A Reop.	579.61	
Real	S.A.P. 500 II	10.34	10.34
Roberts	F.A.P. 625 B	5,371.09	416.17
Sterling	F.A.P. 563 A II	5,396.45	
Throckmorton	S.A.P. 841 A II	33,193.54	
Upton	S.A.P. 903 F II	15,511.52	
Upton	S.A.P. 903 I	1,919.79	
Walker	F.A.P. 470	1,200.00	
Wharton	S.A.P. 879	2,042.37	
Wharton	S.A.P. 945 A	10,617.22	
Wilson	F.A.P. 434 B	17,205.93	70.27
Total interest, additional deposits and unw withdrawn amounts released on above projects			\$119,844.77
Total balance in escrow on above projects			\$322,564.97

Total balances in escrow, interest, additional deposits and unwithdrawn amounts released in above projects as at January 31, 1932.....\$442,409.74

Insufficient amounts placed in escrow:

A segregation of certain projects indicated that \$598,500.00 was due by various counties as at January 31, 1932, for the counties' share of construction costs on which escrow deposit balances at that date to cover the payment of such amounts only represented a total of \$201,472.73. These figures do not include amounts due by counties on projects where bonds have been placed in escrow to secure the State Highway Department of an ultimate reimbursement. Although some of the escrow balances had been remitted to the Department at June 30, 1932, the deficiency between the escrow fund and the amount due by counties had not been paid.

A statement is presented below, itemizing by project, the amounts due by various counties and the escrow funds pertaining to the same project as at January 31, 1932:

County	Project No.	Amount due at Jan. 31, 1932	Balance in escrow at Jan. 31, 1932	Interest and additional deposits
Anderson.....	F.A.P. 403-D.....	\$ 5,685.51	-----	-----
Anderson.....	F.A.P. 556-B.....	692.71	-----	-----
Anderson.....	F.A.P. 556-D.....	1,255.44	-----	-----
Atascosa.....	S.A.P. 628-C and D..	27,914.04	23,353.51	3,860.53
Brazoria.....	S.A.P. 889-D.....	12,253.10	4,049.80	163.61
Brazos.....	S.A.P. 738-F.....	125.79	-----	-----
Burnet.....	S.A.P. 809-B.....	9,244.69	2,447.22	-----
Caldwell.....	S.A.P. 849-A II.....	1,193.38	-----	-----
Cherokee.....	F.A.P. 556-B.....	692.71	-----	-----
Coleman.....	S.A.P. 656.....	2,591.34	-----	-----
Comanche.....	S.A.P. 207-B.....	10,457.84	-----	-----
Ellis.....	F.A.P. 384 Reop.....	5,322.01	3,285.30	-----
Ellis.....	F.A.P. 507-A.....	11,309.38	9,195.21	-----
Ellis.....	S.A.P. 507-B.....	9,740.35	4,821.55	-----
Erath.....	F.A.P. 164 Reop.....	496.14	-----	-----
Fisher.....	F.A.P. 511-C II.....	2,428.74	-----	-----
Fisher.....	S.A.P. 914-C.....	5,674.96	4,499.80	-----
Fisher.....	S.A.P. 917.....	9,904.94	9,246.34	-----
Freestone.....	F.A.P. 780-A.....	5,786.31	-----	-----
Gillespie.....	S.A.P. 908-B.....	2,838.59	-----	-----
Guadalupe.....	S.A.P. 521-B.....	2,034.38	-----	-----
Guadalupe.....	F.A.P. 521-B II.....	5,148.27	-----	-----
Henderson.....	S.A.P. 817-A.....	72,773.71	60,669.56	-----
Henderson.....	S.A.P. 817-B.....	8,931.65	-----	-----
Henderson.....	S.A.P. 818-C.....	1,017.04	19,486.67	-----
Henderson.....	F.A.P. 556-G.....	23,551.11	-----	-----
Henderson.....	F.A.P. 575-E.....	10,405.12	-----	-----
Henderson.....	S.A.P. 878-S Supp.....	16,844.44	-----	-----
Henderson.....	S.A.P. 881-A.....	23,567.96	-----	-----
Henderson.....	S.A.P. 881-B.....	6,065.65	-----	-----
Henderson.....	F.A.P. 556 E.....	7,104.90	4,873.20	-----
Henderson.....	F.A.P. 575 C.....	25,000.00	-----	-----
Henderson.....	F.A.P. 575 D.....	83,811.09	-----	-----
Henderson.....	S.A.P. 845.....	5,958.15	-----	-----
Houston.....	F.A.P. 485 A.....	10,566.57	11.42	257.78
Hudspeth.....	F.A.P. 558 B 11.....	7,869.41	6,564.85	-----
Hudspeth.....	F.A.P. 558 A 11.....	12,591.59	9,082.95	-----

County	Project No.	Amount due	Balance in	Interest and additional deposits
		at Jan. 31, 1932	escrow at Jan. 31, 1932	
Kinney	F.A.P. 484 C	15,331.87		
Montgomery	F.A.P. 514 A	12,019.61	9,957.78	
Montgomery	F.A.P. 460 A 11	5,756.36	4,605.14	
Motley	F.A.P. 529 A	7,358.18		
Motley	F.A.P. 446 B	4,470.82		
Motley	F.A.P. 446 C	247.17		
Nolan	F.A.P. 444 D 11	44,134.06		
Navarro	F.A.P. 569 D 11	679.23	327.87	58.11
Navarro	F.A.P. 569 C 11	6,765.09	6,513.25	216.38
Nueces	S.A.P. 956 A Supp.	9,832.71	7,484.53	
Pecos	F.A.P. 612 B	9,510.53	6,154.62	265.03
San Patricio	F.A.P. 429 B	2,224.51		
San Patricio	S.A.P. 791 A	8,288.07		
San Patricio	S.A.P. 791 C	3,858.13		
Terrell	S.A.P. 780	2,132.28		
Trinity	S.A.P. 697 A 11	3,136.35		
Trinity	S.A.P. 677 B. C. and D 11	212.63		
Tyler	S.A.P. 890 C	8,031.14		
Victoria	F.A.P. 508 A	3,526.51		
Victoria	F.A.P. 508 B	1,556.01		
Victoria	F.A.P. 508 C	2,327.09		
Wise	S.A.P. 753 A 11	2,019.26		
Wise	S.A.P. 753 B 11	6,230.96		
Due by counties on above projects		611,497.18		
Less:				
Kinney	F.A.P. 553			
credit balance		12,997.18		
Net due by counties on above projects		\$598,500.00		
Total Interest and additional de- posits				\$ 4,842.06
Balances in escrow		196,630.67		\$196,630.67
Total balances in escrow, interest and additional deposits on above projects at January 31, 1932				\$201,472.73

## Questions by Senator Stone.

Q. Now, on page 75 of the same volume you have a statement showing there one million six hundred fifty-four thousand plus, what is that item?

A. That represents balances in escrow accounts in banks which had suspended payment.

Q. How much of that was in the Security Trust Company at Austin?

A. That part in the Security Trust Company is divided in two figures here, Senator. I will give you both, the original escrow balance is \$1,516,441.73, and in addition to that credit for interest and so forth \$17,098.46.

Q. Now, explain the condition of that Security Trust Company item at that time.

A. Those were the balances in escrow in that bank, but the bank was not making payments of any amounts against that.

Q. When you say in escrow, had they been selected as the trustee or escrow party between the Highway Department and those counties in that amount at that particular time?

A. That was the understanding.

Q. Now, then, is it your understanding then that after this date was when they made the arrangement with the American National Bank for them to act as trustee or escrow agent?

A. I don't know the exact date that the agreement was made with the American Bank, sir.

Q. At this particular time, the time of this report of January 31, 1932, was the Security Trust Com-

pany also the County Depository for all these counties.

A. I don't know, sir. I didn't investigate the County Depository status.

Q. Now, can you give me the total amount in escrow with the Highway Department on all projects at that date?

A. That is shown on page 70 of Volume 10.

Q. Page 70?

A. Yes, sir.

Q. How much is the amount?

A. \$6,212,232.65.

Q. What percentage of that total amount in escrow was in the Security Trust Company?

A. Do you want me to work that down to an exact percentage or an average?

Q. Approximately exact.

A. It was approximately twenty-five per cent.

Q. Of the entire escrow fund of the Highway Department was in the Security Trust Company?

A. At that date, yes, sir.

Q. Did you have any conversation with anybody in the Department as to why they allowed the Security Trust Company to have such an enormous percentage of their escrow money?

A. No, sir.

Q. Did you find anything in the records over there to indicate why they did or did not have it?

A. No, sir. We did not investigate it as to why any bank was selected.

Q. How many other banks had escrow money to make up this \$6,212,000.00?

A. I would have to get my record to show that. Quite a number of them.

Q. Can you along with that other information bring that information in also?

A. Yes, sir, I can get that for you.

Q. Did you until you made this audit have any idea there was approximately a million and a half dollars in escrow with the Security Trust Company?

A. I had no information on it.

Q. Did you immediately report it to the Highway Department?

A. As to the amounts in the banks?

Q. Yes.

A. No, sir. We did not give them any information until we filed our

report on it. They had their own books there.

Q. On page 76 of your report you give a list of balances in banks which are in liquidation?

A. Yes, sir.

Q. A total of \$463,221.18?

A. Yes, sir.

Q. Do you know what has happened to that money since your report?

A. No, sir, I don't know.

Q. Now, how did that item arise?

A. Those are balances which were in escrow in these certain banks and the banks were placed in liquidation—I don't know whether voluntarily or involuntarily, but they were in liquidation at the time we made the examination.

Q. That is part of the item that goes to make up your six million two hundred thousand dollar item?

A. Yes, sir.

Q. Now, check through your report there, Mr. Carter, and find out at the date of your report how much of these escrow funds were involved in banks which were either in liquidation or which had practically suspended payments?

A. You want me to calculate the total of that, Senator?

Y. Yes, the total.

A. There are three conditions mentioned. I will give the separate items and then the total of the three. In banks which had suspended payment \$1,654,437.28. In banks which were in liquidation \$463,221.18. In banks which had placed limits on withdrawals \$35,413.88. The total of those three items is \$2,153,072.34.

Q. What percentage of the total escrow funds then are in that condition?

A. It is approximately 33 1-3 per cent.

Q. Of the total escrow funds were in that shape?

A. Yes, sir.

Q. In other words, approximately one-third of the funds that were in escrow you couldn't go to the banks and get the money?

A. That is the condition.

Q. That is the condition?

A. Yes, sir.

Q. Do you know what the condition of that account is at the present time so far as the whole escrow account is concerned?

A. No, sir, we have made no additional investigation.

Q. What additional investigation have you made since January 31, 1932?

A. Only the one additional investigation on which we made a report to the Governor.

Q. How much of a job would it be for you to get the condition of that escrow account at the present time?

A. We would probably have to go over pretty much the same proceeding as before, by circularizing the banks, and it took something like four months to do it before. We might be able to do it a little faster now, but that is about what it took.

Q. Do you know whether or not the Highway Department requires a regular form to be submitted by the depository before accepting it?

A. What kind of form, Senator, do you refer to?

Q. Before they will approve any one as a depository for escrow funds?

A. You mean a balance sheet as to its condition?

Q. Yes, sir.

A. I don't know of any.

Q. Do you know whether or not they make any investigation whatever before accepting a bank as a depository?

A. I do not.

Q. In your examination of their records, did you make any investigation to find out whether they did or did not?

A. I did not.

Q. Couldn't you, by telegraphing these various banks, find out the present condition of these escrow funds?

A. The trouble is, Senator, they will not answer us very promptly. We had to circularize some of them three or four times, and some of them we had to go to the banks and get the information off of their books.

Q. Will the Highway Department books tell you that?

A. We found in many cases the information from the Highway Department books was not in condition where we could build up the figures.

Q. If they had a proper set of books you could find out?

A. Yes, sir, if they had ledger accounts we could get it very easily.

Q. Turn to page 78 of the same volume?

A. All right, sir.

Q. You have got a statement in there with reference to Fisher County on Project No. S. A. P. 917?

A. Yes, sir.

Q. Is that statement as set out in here correct?

A. The best information we could get, it is, sir.

Q. In short language what is the effect of that transaction?

A. Fisher County owes the Highway Department but has no money to pay it with.

Q. How much is the loss on that, if any?

A. I can tell you the amount Fisher County owes.

Q. The amount involved.

A. The information I have as to the amount that should be in escrow is \$9,246.34.

Q. Turn over on the next page. Explain that transaction with reference to Trinity County.

A. This reference is rather short. It might be, if I would read it, I would give you the explanation. It would give you the explanation as well as I could.

Q. All right.

A. "In still another instance, Trinity County deposited \$46,000 in escrow to cover its share of the cost of project S. A. P. 697 A II. Payments made to the State Highway Department aggregated \$39,554.43. There was also paid by Trinity County \$3,309.22 for materials, making total payments out of this fund of \$42,863.65. The County Treasurer, upon being advised by the Highway Department that the county's portion of the cost of this project had been paid, transferred the balance remaining in this account to the county's operating fund. It developed subsequently that the Treasurer had been advised erroneously by the Department, and that Trinity County still owed \$3,136.35. On September 16, 1932, the County Treasurer advised the State Auditor regarding this transaction as follows: 'After receiving your letter in regard to a balance of \$3,136.35 we transferred the said balance on August 8, 1932, to project No. 697 A unit No. 2 on my records and said project shows a balance of \$3,136.35.' The depository bank also advised that the above amount had been returned to the escrow fund."

Q. Turn over to page 80 of this report. You have got a schedule there of "Escrow Certificates Signed With-

out Proper Deposits Having Been Made." What do you mean by that?

A. In those cases the amounts shown by the escrow certificates signed by the banks as having been deposited did not agree with the amounts shown by the transcript of the bank account showing actual deposits in the banks.

Q. Say that again.

A. In other words, the bank in the majority of these cases signed an escrow certificate for more money than was actually placed on deposit.

Q. Would the Highway Department have had any way of checking to see whether those certificates were true and correct, or not?

A. The only way they could have done it would be to do as we did, get transcripts of the bank accounts from the banks. The only way we got it was to get a transcript of the actual deposits in the banks.

Q. What is the amount involved in that?

A. I don't have the total of it. I would have to add that to get the difference.

Q. Let's have the total.

A. I will need an adding machine for that. Let me send it out and have it put on the adding machine.

Q. Send it out and we will get it then. Turn over to page 81 of Vol. 10. What is that schedule shown on there?

A. That seems to be a case where they should have been deposited in escrow, but the information that we got from the officials in charge of the bank,—I can read this explanation, which is a quotation.

Q. That's not the one I am talking about; I am talking about that \$81,500.42 up there.

A. This is an explanation of that item: \$81,000 were the balances that should have been in escrow according to the escrow certificates on file; the information that we got about that the special agent of the bank when requested to confirm the above balances advised the Auditor's Department as follows: "From the information I have been able to obtain, it appears that the escrow funds for the various projects done here, were never set up on the books, but when a check was issued, it was charged to one of the designated bond fund accounts." In other words, the bank although they signed an escrow certificate did not actually set up an escrow account.

Q. And the only way that the Highway Department could have caught that would have been to secure a

statement of the transcript of the bank book in addition to the escrow agreement?

A. That's the only way.

Q. Was that ever done in any of the cases that you ran into?

A. I don't know of any.

Q. What's that transaction shown on the same page in reference to Wise County?

A. That's a case where although the escrow certificate was on file, the bank advised that the escrow money was actually never deposited, and the Highway Department was not able to collect, up to the last information we had on it.

Q. How much is the amount involved in that?

A. The county owed the Highway Department a balance of \$8,250.22.

Q. You recommend that: "The Attorney General should be consulted as to whether or not there is legal recourse against a depository bank which signs depository certificates under these circumstances"?

A. Yes, sir.

Q. Do you know whether or not he was consulted?

A. You mean after this report was made? I don't know, sir, whether he has been or not.

Q. Now, turn to page 82, what's that schedule?

A. That's a schedule of bonds which had not been deposited with the Highway Department to secure their payments in lieu of actual cash deposits in the bank as of this date.

Q. In other words, in these counties mentioned there, they did away with the county depository or escrow agreement and just actually deposited the bonds with the Highway Department?

A. In these particular cases they deposited the actual bonds, yes, sir.

Q. Do you know whether this is the total number of cases in which that was done?

A. These were the only ones that we found any record of, sir.

Q. Now, is this item of \$938,000 worth of bonds, is that included in your \$6,000,000 estimate of escrow accounts?

A. No, sir, the \$6,000,000 are cash deposits.

Q. I believe that's all I want right now.

Senator Purl: I want to ask a few questions, Mr. Chairman.

The Chair: Mr. Purl.

## Questions by Senator Purl.

Q. Mr. Carter, when I interrogated you a few days ago, on page 430 of the Senate Journal in response to a question I asked you if you found a million dollars shortage and you said "No, sir," and I asked you did you find a hundred thousand dollar shortage and you said: "No, sir, we did not find—that word shortage is another item that is widely used, and is subject to various interpretations;" and then I asked you just the commonly accepted term of honesty, and your reply was that "We found no large cash shortage of any kind."

A. That's true.

Q. Now, I want you to take that report that you hold in front of you and look on page VI and page VII of the index and show me anywhere in the index where you show where you found any kind of a shortage, either large or small, as reflected by the index of your report?

A. Under audit of payrolls, we show: "Falsifying Section Payrolls by Section Foremen—"

Q. What item is that?

A. On page 135.

Q. Turn to page 135.

A. All right, sir.

Q. Now what shortage do you refer to there?

A. It was found that the section foreman at Del Rio had entered amounts on his payroll in the name of an employee who had formerly worked for the Highway Department but who had not worked during the period from July 1 to July 15, 1931, for which the payroll was submitted—

Q. Where are you reading from?

A. On page 135, under the heading: "Falsifying Payrolls by Section Foremen."

Q. All right, I have caught that; now go ahead.

A. The warrant which we had at the time of that payroll delivery amounting to \$26.91 was cancelled.

Q. \$26.91 in Del Rio?

A. Yes, sir; in addition to that, the section foreman made a refund of \$76.55.

Q. Pardon me, I didn't hear you?

A. In addition to that item, the section foreman also made a refund of \$76.55, which he admitted that he had converted to his own use on prior payrolls.

Q. That's a total amount of shortage of how much in that section?

A. I would have to calculate it.

Q. Is it \$26.91 plus \$76.55?

A. Yes, sir.

Q. Whatever amount that total is?

A. That's true.

Q. Will you add that up, please? \$103.46, isn't it?

A. That's correct.

Q. Now, what was that foreman's name?

A. I will have to refer to my working papers to get that, sir; it is not shown in the report.

Q. You are not prepared to state his name now?

A. Not at this time; I can get it for you.

Q. Well, his name was not Cone Johnson?

A. No, sir.

Q. His name was not Gibb Gilchrist?

A. No, sir.

Q. His name was not W. R. Ely?

A. No, sir.

Q. His name was not B. K. Martin?

A. No, sir.

Q. Or that of any department head of the Highway Department?

A. No, sir.

Q. But somebody who was foreman at Del Rio?

A. Yes, sir.

Q. All right, let's turn back to the index; was that man discharged?

A. I understand that he was; I wasn't there myself.

Q. But it is your opinion at this time that that man was discharged?

A. Yes, sir.

Q. All right, now turn back to the index; did the State get the money back in that instance?

A. We held one warrant and he refunded the other item.

Q. Then in this item of \$103.46, how much was the State actually out?

A. The State wasn't actually out anything on it, because we collected a refund and cancelled a warrant.

Q. In that shortage the State wasn't out anything then?

A. No, sir, because we stopped it.

Q. And the State didn't lose anything in that instance?

A. No, sir.

Q. You mean to say that the Highway Department and the State funds were not out anything in that instance?

A. Not after we got it back, and cancelled the warrant; but they had been out.

Q. Who is "we", the Attorney General or the Auditor?

A. The Auditor.

Q. Oh, the Auditor got it back? The Auditor's Department?

A. Yes, sir.

Q. Out of writing letters themselves?

A. No, sir, but one of my assistants, Mr. Fred L. Humphry, who was making payroll delivery at the time—

Q. (Interrupting) How did you get it back?

A. Mr. Humphry questioned the man, and, as I say, I wasn't there and couldn't give you all the details of it, the exact procedure of it, but Mr. Humphry got the man to admit that he abstracted or rather had collected this money in excess of the amount that should have been paid, and the man gave him a check for it, and it was turned back into the State funds.

Q. He gave his personal check?

A. I am not sure whether he gave his personal check, or whether it was a cashier's check.

Q. But anyway it was a negotiable check and it was turned back into the State treasury to the credit of the highway funds?

A. Yes, sir.

Q. So the State wasn't out any amount of that?

A. No, sir.

Q. Look at the index and let's find some more shortage of any kind, whether large or small.

A. I think those are the only ones which we gave the interpretation of shortage to the other day, which is a cash embezzlement; those are the only ones which I can say definitely were cash embezzlements.

Q. The only cash embezzlements were the item of \$103.46, representing an item of \$76.55 and an item of \$26.91, which the State recovered, due to the efforts of the State Auditor's Department?

A. There may be one other item in connection with that, if you will just let me look for it?

Q. I will be glad for you to.

A. "The section foreman at Falfurrias, Texas, had entered three men on his payroll — —"

Q. What page are you reading from?

A. 135, at the bottom of the page.

Q. All right, read that in the record.

A. "The section foreman at Falfurrias, Texas, had entered three men on the payroll who had not worked, during the period from July 16 to July 31, 1931, covered by the

payroll." The rest of it is just an explanation of it.

Q. Finish reading that, please, sir.

A. "The section foreman admitted that one of these men had not worked, but claimed that the other two had been at work during this period. Information obtained and affidavits secured from other employees who were working under this section foreman at the time evidenced the fact that none of these men had worked, and the section foreman was discharged immediately by the division engineer."

Q. He was discharged?

A. Yes, sir.

Q. You know the name of that section foreman?

A. We have it in our file, but I don't have it before me.

Q. But it was not either one of the Highway Commissioners or Mr. Gilchrist, or any of the Highway Department heads?

A. It was not.

Q. Did you find out how much money was lost because of that procedure?

A. I have a total here from which I can calculate — — —

Q. (Interrupting) Sir?

A. I can calculate it here for you; the warrants involved in that particular transaction amounted to \$90.72.

Q. In Falfurrias, it was \$90.72?

A. Yes, sir.

Q. Did the State get any of that money back?

A. We didn't deliver the warrants. We cancelled them.

Q. Was the state out any money in that instance?

A. No, sir, because we saved it.

Q. You saved it. So the State wasn't out any money ultimately in the Del Rio instance or in the Falfurrias instance?

A. No, sir.

Q. Now, will you turn back to the index, please, sir, and in response to your answer that "We found no large cash shortage of any kind," you have shown in the Del Rio and Falfurrias instances two items on which you say the State was not ultimately out anything, due to the efforts of the State Auditor's Department?

A. That's right.

Q. Now, will you find where there are any other shortages of any kind, large or small?

A. There are no other shortages in the nature of cash embezzlements.

Q. If that be true, then \$90.72 and \$103.46 make \$194.18, isn't that correct?

A. That's correct.

Q. Now, then, that's all of the embezzlements or shortages that you found of any kind in the Highway Department?

A. That's all we found that we could definitely class as cash embezzlements.

Q. And the State lost not one penny in those cases?

A. Because we recovered it.

Q. Then this \$100,000.000 shortage in the Highway Department that was banded around over the State dwindles down to \$194.18 which your report shows that the State ultimately wasn't even out that much?

A. Senator, that's a question that I could hardly answer.

Q. If we should waive aside that amount, which you testified the State recovered, then in response to my question when you said: "We found no large cash shortages of any kind," do you still want to say that?

A. I say that there are no cash shortages that we found except those items.

Q. But you said no large cash shortages, didn't you?

A. Well, I consider these cash shortages, although not large.

Q. And that was on the part of employees, and in both instances they were discharged?

A. Yes, sir.

Q. Now, then, in response to my question at the same hearing, and I want to be fair, I can't find it right here at this time, I understood you to say that it was your understanding that in most instances the employees were discharged?

A. I think that's correct.

Q. Now then, it is your opinion in every instance that way?

A. I think so, yes.

Q. Now then, this \$194.18 shortage, that represents what part of the total amount that the Highway Department held during the period of your audit, and administered?

A. A very small part.

Q. What was about the total amount they administered?

A. Approximately eighty million dollars, I don't remember exactly.

Q. Approximately eighty million dollars, and you found two shortages in two instances of one hundred and ninety-four dollars and eighteen cents?

A. That is the only one we located.

Q. And the State recovered in those instances?

A. Yes.

Q. What other departments of the State government have you been the auditor in other than the Highway Department?

A. The other audits I have personally taken charge of were more in connection with system installations. I have not personally taken charge of the other audits because that was not my part of the work.

Q. Those systems you took charge of, what departments were they?

A. The Comptroller's office and the State Treasurer.

Q. That is three major departments you have had charge of, with one as an audit and the other installing the efficiency system?

A. Yes, sir.

Q. That has taken up most of your time since you have been here.

A. That and supervision of the other men.

Q. Now then as compared to the Comptroller's Department and the Treasurer's Department and the Highway Department which one of those three departments are you now prepared to say is administered most efficiently: The Highway Department, the Treasurer's Department or the Comptroller's Department?

A. I think we can safely say that of the three the Highway Department is best administered or was at the time we made those checks.

Q. Of any of the three you had anything to do with?

A. I would like to qualify that by saying that both the Treasurer and the Comptroller have made improvements.

Q. Yes, I agree with you, I am prepared to say that. You are making no reflection on anyone.

A. No, sir.

Q. But of the three, based upon your knowledge at the time, and your experience, and reflection and judgment the Highway Department was best administered at that time?

A. I think so.

Q. You are making a comparison of the three.

A. Yes, sir, from the standpoint of efficiency and general organization.

Q. Now then you are familiar, are you not, with the fact that the State has,—I ask this merely for the purpose of the record. I do not mean it as an indictment of your knowledge,—the State also has a department known as the Banking Department?

A. Yes.

Q. And the purpose of the Banking Department, in the main, is to supervise and see that the banks and building and loan associations of this State, and the trust companies that come under the law, that the people's money is properly safeguarded?

A. I am not familiar with the Banking Department; however, that is my impression of it, but I have no personal knowledge.

Q. It is also your information as a layman that the county commissioners court designates the county depositories as authorized by law?

A. That is a matter, Senator, that gets into legal construction that I am not prepared to answer.

Q. Isn't it your impression, living in Dallas, as a citizen, you have heard of the commissioners court designating a certain bank as a county depository?

A. I will have to answer that like I did the other legal points. I don't think it is a matter I can testify about.

Q. Isn't it your general knowledge that the city of Dallas designates the city depository, and that the county of Dallas designates a county depository?

A. I think that is general knowledge but I couldn't say that it is a fact from my personal knowledge.

Q. That is your idea about it?

A. Yes, sir that is my idea, if you want that.

Q. Now then, as a man auditing the Highway Department will you state to the Committee just from what source their funds come with which they operate? One of them is licenses?

A. Highway license fees.

Q. Gasoline?

A. The gasoline tax.

Q. And Federal aid?

A. Federal aid and county aid.

Q. And county aid?

A. Yes, and in addition to that some miscellaneous fees of various kinds.

Q. Miscellaneous fees and penalties they get in?

A. Yes.

Q. Now then, when, in response to Senator Stone's question when he had you turn to different pages in the book showing different accounts, banks I should say, in which the Highway funds were deposited, that was money at that time belonging to the counties, was it not?

A. That was money that was in escrow. The status of that money is a legal question that I cannot pass on.

Q. As to who determined which particular bank that escrow was to be in are you willing to say?

A. No, sir.

Q. And your report does not mean any reflection on the Highway Commission in any shape, form or fashion, the fact that the funds were in particular banks?

A. The report was made to show the status of the public funds, which we are required to pass on.

Q. But not as a criticism of the Highway Department?

A. It is put in there for the information of the Legislature and the people in general.

Q. And not as a criticism of the Highway Commissioners because the funds were in those banks?

A. It was merely a report of the status of the money.

Senator Martin: I object. I think the report speaks for itself. I object to this line of questions as to whether or not the report shows or reflects on anybody. The report speaks for itself and is the best evidence of what it contains. I do not think it is within the prerogative of this witness to be interpreting it for this Senate.

The Chair: Did this witness help prepare the report?

A. Yes, sir.

The Chair: I overrule the objection.

Senator Martin: Does the Chair know what the question was?

The Chair: Did you understand the ruling?

Senator Martin: Yes. May I have a full bill?

Q. (By Senator Purl) I didn't get your answer. I say your report that carried the bank they were in, these particular funds—didn't intend by that report to cast any reflection upon the Highway Commission, the fact that they were in the particular bank or banks?

A. The report was made simply to show the status and location of the funds.

Q. Now then as to the money that was in the twenty some odd counties, who used the Security Bank and Trust Company as a depository, your report details that, does it not?

A. This report, I don't think details the exact account was in the depository, we show the total amount in the depository.

Q. And that report does not mean any reflection or blame on the Highway Commission because it is in that bank?

A. The report was made to show the status of the funds and where they were located.

Q. Now, Mr. Carter, while you were auditing the Highway Department just as a basis to find out how many dead men, or plugged payrolls there might be, didn't you deliver the payrolls in some particular instance or instances?

A. In two or three divisions, I don't remember how many.

Q. Could you tell us which divisions they were?

A. Yes, I delivered one semi-monthly payroll in Division Ten. I delivered half of one semi-monthly payroll in Division Fifteen, and I delivered one-half of the semi-monthly payroll in Division Fourteen. I delivered part of another payroll in the division where Abilene is located, I don't remember the number.

Q. Did you find any plugged or dead men or fictitious names on the payroll?

A. I didn't in the ones I checked.

Q. Did you deliver the payroll in the county that Llano is a part of?

A. Yes, sir, I delivered one payroll in that county.

Q. You yourself found no fictitious names on the payroll?

A. All of the men I had payroll checks for appeared and identified themselves and accepted their checks.

Q. Do you know whether or not subsequently the Highway Department found there were fictitious names in the Llano district?

A. I was told by Mr. Fraser of the

Highway Department that he had subsequently found some there.

Q. Do you know about that fact?

A. I don't know anything about it, other than just one casual mention of it.

Senator Purl: I will yield to Senator Stone for a couple of questions.

Q. (By Senator Stone) I believe you stated that approximately twenty-five per cent of the escrow accounts were in the Security Trust Company, wasn't that the figures you gave me just now?

A. Yes, that is correct.

Q. And approximately thirty-three and one-third per cent of the escrow funds were in banks which were either in liquidation or had failed or in which limitation had been placed on their withdrawals?

A. Yes, sir, that is true.

Q. At the time you made this check did you check the individual escrow deposit agreements?

A. Yes, sir, we checked the escrow deposit certificates in each case.

Q. Did you make any check to see whether any securities had been put up for those deposits?

A. No, sir, we did not go into the matter of securing county deposits at all.

Q. (By Senator Purl) Mr. Carter, I believe in the first part of the book it shows that besides yourself you had about nineteen assistants, including the stenographers?

A. At various times. They were not all on the job at one time, and many of them were not on it for a long period of time.

Q. And then in addition to that you had other employees from the State Auditor's staff from time to time when you needed them.

A. Yes, sir.

Q. Then we can take it that this report is the work of those named as well as those who assisted you who are not named?

A. That is true.

Q. How long did it take you to make this audit?

A. Altogether we were on the audit approximately a year and a half. A great part of that time I would like to say I was not following up our special investigations during this current year and I had only from one to three men on the matter.

Q. Those auditors are on a State salary and they do not go according to the amount of salary based on

the regular CPA you hire out in the commercial world?

A. Oh, no, we pay them a very moderate salary for the class of men we have.

Q. Now then, waiving aside, just for a minute, the value of the report as to the efficiency and special suggestions,—I grant you there is a lot of constructive criticism,—but taking absolutely from the standpoint of running down corrupt embezzlements, you found only that amount you have spoken of before?

A. That is true as to the status of embezzlement.

Q. Could you tell us approximately what this audit costs?

A. It costs approximately, the best calculation I could get on it, \$39,539.99.

Q (By Senator Stone): I didn't hear your answer?

A. \$39,539.99. Those figures are shown on page 12 of the report.

Q. (By Senator Purl) How much of that \$39,000 dollars came out of the Highway fund?

A. \$22,900.00.

Q. And the rest out of the appropriation made to the State Auditor?

A. For our general work, yes.

Q. Are you prepared to state that you made a complete audit?

A. No, sir. It will depend, Senator Purl, on the accepted term of a complete audit. We show in this report very clearly certain items which we were not able to investigate completely because we did not have appropriations sufficient to hire enough men to do it.

Q. It is a matter of general knowledge that when Governor Moody went into office as Governor he secured a leave of absence for County Auditor Harry Washburn of Harris County to set up a system of bookkeeping for the Highway Department?

A. I don't know how it happened but I know Mr. Washburn set up and devised the system.

Q. Taken as a whole the system will compare favorably with any like organization?

A. With reference to that I will state as I have stated, we have made some recommendations of changes with reference to the way the system was divided.

Q. Did you make that recommen-

dation to the department heads or in the report?

A. We made that in conversation with Mr. Lloyd, Chief Accountant of the Highway Department, and a discussion with Mr. Harry Washburn, and the report is now in the hands of the printer.

Q. Have you made any comparison of general maintenance from year to year of the Highway Department,—whether or not it has gone up or down?

A. You mean the amount of money expended?

Q. Yes, sir.

A. Yes, Senator, we made a comparison of four years. Those figures are not in this section of the report. They are in the section of the report now in the hands of the printer.

Q. What does that show?

A. I don't remember.

Q. Well, does it show favorable, —up or down?

A. I can only say as to the last two years. I have some figures on the last two years in this book and can give you some figures on that.

Q. I would like to have them,—general maintenance I am speaking of.

A. Regular maintenance as they called it for the year ending August 31, 1930, was \$7,595,482.47; for the year ending August 31st, 1931, it was \$6,884,761.99.

The Chair: Any further questions?

Senator Purl: Yes, sir.

Senator Stone: I have one or two more.

Senator Purl: This report is big and voluminous; it's in the record.

Senator Fellbaum: I make a motion that we recess until 2:00 o'clock tomorrow afternoon.

Questions by Senator Purl.

Q. Mr. Carter, I believe you stated in response to my question a day or two ago that you went to James E. Ferguson's office in the Naille Building, and later on testified in response to other questions, to find out the status of employees coming under this administration in the Auditor's office?

A. Yes, sir.

Q. Now, in that report here—I think that you stated that James E. Ferguson—did you call him or did

he call you to make the appointment?

A. He requested Mr. Lynn to have me come and talk to him.

Q. You went down in response to his request rather than going down voluntarily?

A. That's true; otherwise I wouldn't have gone.

Q. You didn't know the purpose for which he called you?

A. I did after Mr. Lynn asked me to go down there,—I knew exactly what I was going for.

Q. That's what I want to get clear, whether or not the State Auditor's office were apprehensive about the status of the employees and sent you down to find out?

A. That's true.

Q. How did Governor Ferguson know you were apprehensive and call you to come down?

A. Because Mr. Lynn talked to him the day before about the same subject.

Senator Purl: All right, that's all.

A substitute to the motion to adjourn until ten o'clock tomorrow morning was offered by Senator Sanderford that the Committee of the Whole request the Senate for permission to recess until 10:30 a. m., Friday, February 24th, 1933, which substitute was duly carried.

### THIRTIETH DAY.

Senate Chamber,  
Austin, Texas,  
February 24, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Murphy.
Blackert.	Neal.
Collie.	Oneal.
Cousins.	Pace.
DeBerry.	Parr.
Duggan.	Patton.
Fellbaum.	Poage.
Greer.	Purl.
Holbrook.	Rawlings.
Hopkins.	Redditt.
Hornsby.	Regan.
Martin.	Russek.
Moore.	Sanderford.

Small.  
Stone.  
Woodruff.

Woodul.  
Woodward.

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

### Committee Reports.

(See Appendix.)

### Bills and Resolutions.

By Senator Woodul:

S. J. R. No. 18, Proposing an amendment to Section 21, Article 4 of the Constitution of the State of Texas fixing the salary of the Secretary of State; providing for its submission to the voters of the State of Texas as required by the Constitution, and making an appropriation therefor.

Read and referred to Committee on Constitutional Amendments.

By Senator Duggan:

S. J. R. No. 19, Proposing amendment to Section 5 of Article 7 of the Constitution of the State of Texas; providing for its submission to the voters of the State of Texas as required by the Constitution, and making appropriation therefor.

Read and referred to Committee on Constitutional Amendments.

By Senator Duggan:

S. J. R. No. 20, Proposing an amendment to Article 5 of the Constitution of Texas by adding thereto Section 30 providing that the Legislature may, by general law, provide for complete forms of county organization and government different from that provided for in Article 5 of the Constitution of the State of Texas, to become effective in any county when submitted to the qualified voters thereof in an election held for such purpose and approved by a majority of those voting thereon; providing for its submission to the voters as required by the Constitution and making an appropriation therefor.

Read and referred to Committee on Constitutional Amendments.

By Senator Holbrook:

S. B. No. 287, A bill to be entitled "An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas the sum of One Thousand, Three Hun-